



**the army**

**LAWYER**

**HEADQUARTERS, DEPARTMENT OF THE ARMY**

**Department of the Army Pamphlet  
27-50-98  
February 1981**

**The Judge Advocate General's  
Corps—1981**

*A message on the state of the Corps from*

**MAJOR GENERAL ALTON H. HARVEY,**  
*The Judge Advocate General,  
United States Army*

As we enter 1981, I would like to give you my evaluation of where our Corps is today and where it is going.

**Table of Contents**

<b>The Judge Advocate General's Corps—1981 . . . .</b>	<b>1</b>
<b>Disciplinary Infractions Involving USAR Enlisted Personnel: Some Thoughts for Commanders and Judge Advocates . . . . .</b>	<b>5</b>
<b>From the Desk of the Sergeant Major . . . . .</b>	<b>31</b>
<b>Professional Responsibility . . . . .</b>	<b>33</b>
<b>Judiciary Notes . . . . .</b>	<b>34</b>
<b>A Matter of Record . . . . .</b>	<b>34</b>
<b>Legal Assistance Items . . . . .</b>	<b>35</b>
<b>Recent Criminal Law Decisions . . . . .</b>	<b>37</b>
<b>Reserve Affairs Items . . . . .</b>	<b>39</b>
<b>New JAGC Brigadier General Selected . . . . .</b>	<b>39</b>
<b>JAGC Personnel Section . . . . .</b>	<b>40</b>
<b>Computerized Legal Research—FLITE . . . . .</b>	<b>41</b>
<b>CLE News . . . . .</b>	<b>41</b>
<b>Current Materials of Interest . . . . .</b>	<b>45</b>

**A. ACTIVE OFFICER POSTURE.**

This past year has been a year of considerable progress. The Corps can be proud of its accomplishments. In my visits to the field, I have found morale and esprit high, facilities much improved, and judge advocates rising to the professional challenges of their work. Commanders are using their judge advocates, staying out of trouble by doing so, and generally are quite satisfied with the quality of legal services which the Corps is providing. This is not to say that there are no problems. The Army is still being sued, court-martial cases are up, labor and contract disputes abound, mobilization planning and international legal aspects of rapid deployment are challenging our best legal minds, and demand continues for greater judge advocate activity in the expanding administrative law area. Never before has our Corps been called upon to provide services in so many diverse areas. It is a time of opportunity, a time to find new ways to meet our cli-

ents' legal needs—a time in which we can take pride in serving as attorneys in uniform.

Pride alone, however, is not enough and action is necessary to permit the Corps to meet the legal needs of the Army. Some historical constraints have limited us in the past. For example, heretofore, severe year group restrictions on Regular Army appointments prevented us from granting Regular Army status to many deserving judge advocates. Fortunately, this has changed. During 1980, we obtained the authority to award Regular Army appointments to 950 judge advocates, an increase of 185 over previous years. This increased latitude, coupled with judicious management, will allow us to develop a Regular Army career force of qualified, motivated officers without arbitrary year group limitations. Specialized legal areas have grown, particularly in environmental, labor, and administrative law. To permit the Corps to respond more effectively to this growth, we have reinstituted a civil schooling LL.M program for limited specialty fields. Additionally, more judge advocates will be attending the Graduate Course, staff colleges, and senior service schools than ever before. These increased opportunities for advanced training will allow judge advocates to provide more responsive legal advice to our clients and to obtain much greater professional develop-

ment. The newly established Professional Recruiting Office, supported by our Field Screening Officers, has been working to attract highly qualified law students, with excellent results. Additionally, I am pleased to report that the chronic shortage of judge advocates should be eliminated shortly due to both the recruiting effort and an increase in end-strength which will result in a considerable number of additional officers. I anticipate virtually all authorized positions being filled in the not too distant future.

This anticipated rapid growth will pose challenges for the future, but it is crucial to the development of the Corps. It comes at a time when retention is improving and the historical shortage of middle managers is beginning to fade. The promotion forecast for judge advocates is good. Our promotion zones to lieutenant colonel and colonel are deeper than the Army promotion lists and the percentage of judge advocates selected for promotion to all field grades is higher than that of the Army promotion list. Promotable captains or field grade officers are now filling most field grade judge advocate positions worldwide. The Corps is approaching an experience level whereby it can provide more effective and timely legal advice to commanders and soldiers.

#### The Judge Advocate General

Major General Alton H. Harvey

#### The Assistant Judge Advocate General

Major General Hugh J. Clausen

#### Commandant, Judge Advocate General's School

Colonel David L. Minton

#### Editorial Board

Colonel William K. Suter

Colonel W. K. Myers

Major Percival D. Park

#### Editor

Captain Connie S. Faulkner

#### Administrative Assistant

Ms. Eva F. Skinner

#### The Army Lawyer (ISSN 0364-1287)

*The Army Lawyer* is published monthly by the Judge Advocate General's School. Articles represent the opinions of the authors and do not necessarily reflect the views of the Judge Advocate General or the Department of the Army. Masculine or feminine pronouns appearing

in this pamphlet refer to both genders unless the context indicates another use.

*The Army Lawyer* welcomes articles on topics of interest to military lawyers. Articles should be typed double spaced and submitted to: Editor, *The Army Lawyer*, The Judge Advocate General's School, Charlottesville, Virginia, 22901. Because of space limitations, it is unlikely that articles longer than twelve typewritten pages including footnotes can be published. Footnotes, if used, should be typed on a separate sheet. Articles should follow *A Uniform System of Citation* (12th ed. 1976). Manuscripts will be returned only upon specific request. No compensation can be paid for articles.

Individual paid subscriptions are available through the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. The subscription price is \$12.00 a year, \$2.00 a single copy, for domestic and APO addresses; \$15.00 a year, \$2.50 a single copy, for foreign addresses.

Issues may be cited as *The Army Lawyer*, [date], at [page number].

All these factors demonstrate great progress in the last year and 1981 will be filled with similar opportunities. For example, the Defense Officer Personnel Management Act (DOPMA) will mandate changes in our personnel system. These may include: (1) designation of judge advocates as a separate competitive category for promotions, (2) increased Regular Army selections for the career force, (3) elimination of the current dual promotion system. The most immediate effect of DOPMA may be to reduce the entry grade of most new judge advocates from captain to first lieutenant with opportunity for promotion after about six months. If this occurs, our recruiting efforts will have to be even more vigorous than they have been in the past in order to continue our growth pattern. We have proposed remedial legislation which would restore the judge advocate entry grade to captain, but the success of this proposal is uncertain.

#### **B. WARRANT OFFICER POSTURE.**

Our warrant officer posture has continued to improve. There are currently 80 requirements and 58 authorizations for warrant officer legal administrator positions in approved manpower authorization documents. Commands recently gaining an authorization are HQ Eighth US Army in Korea, Fort Rucker, and the 193d Infantry Brigade in Panama.

At present, we have 56 warrant officers assigned. This slight shortfall will be remedied with new appointments following the annual selection board, which will convene in late January or early February 1981. The 1980 selection board considered 18 applicants and recommended six for appointment. The standards for appointment, which have been developed and refined over the past three years, are apparently successful. Staff judge advocates report complete satisfaction with the technical abilities, competence, initiative, and dedication of recent appointees.

We recently obtained approval to increase our warrant officer fiscal year end-strength from 58 in FY 1980 to 70 in FY 1981. Whether we attain that new ceiling, however, will de-

pend on the quality of applicants to be considered by the upcoming board. Although the end-strength has not impacted on selection board results in the recent past, this increase will effectively remove the potential constraint and perhaps result in the reduction of assignment underlap and enable the fill of all authorized positions.

With the FY 1981 application period, the time frame for submitting applications is now firmly established at 1 January-31 March. Application procedures are currently provided in DA Circular 601-80-1. Legal clerks and court reporters should be encouraged to develop their qualifications, and those qualified should be encouraged to submit applications.

The 1980 warrant officer AUS promotion selection rate was slightly above the Army average. Due to our small numbers, however, individual grade and zone comparisons are not really meaningful. This last board selected one warrant officer for promotion to CW4 and nine for promotion to CW3. Our current grade posture compares most favorably to the Army average for both CW4 (13.3% vs. 10.4%) and CW3 (36.6% vs. 29.2%). Of special note is that, of all warrant officers in the Army, ours exceed both every other MOS and the overall average in average age (38 vs. 34 average), years of active service (17.1 vs. 13.0 average), and years of warrant officer service (7.8 vs. 6.8 average). These figures, which reflect the experience level, maturity, and career-mindedness of our warrant officers, is attributed to their exceptional dedication and job satisfaction.

In view of the above, I am confident that we will continue to receive superior administrative management support from our warrant officers, that their individual career management and progression is well in hand, and that opportunities are excellent for the best qualified of our legal clerks and court reporters to attain warrant officer status.

#### **C. ENLISTED PERSONNEL POSTURE.**

During the past year a considerable amount of progress has been made in the enlisted Corps.

The many valuable ideas and suggestions of our enlisted personnel, and their personal concerns, were given a conduit for expression on 26 May 1980, when Sergeant Major John Nolan reported to OTJAG as our first Sergeant Major. Since his assignment, he has visited over 32 commands and installations, addressed students and conferees at Fort Benjamin Harrison and The Judge Advocate General's School, and represented both me and our enlisted personnel at various official functions, meetings, and planning sessions. In the short period since coming to OTJAG, he has also provided OTJAG coordination on many staff actions involving enlisted matters, worked closely with the Sergeant Major of the Army on various programs, and provided the enlisted viewpoint to OTJAG action officers. These accomplishments, and his monthly column in *The Army Lawyer*, have succeeded in providing a respected voice and effective representation for our legal clerks and court reporters at the highest level of the Army.

In July 1980 we requested conversion of the Army Instructor position at the Naval Justice School in Newport, Rhode Island, from MOS 71D (legal clerk) to MOS 71E (court reporter). That request was approved, and does not affect the position's grade of E8 or its tour stability of three years. SP6(P) Robert C. Rogers has been assigned as the first court reporter to fill the position, and he recently reported for duty. This change is expected to result in better instruction, based on actual field experience, to Army court reporter trainees, provide an appropriate senior NCO position for court reporters, and provide the Corps an experienced authority and point of contact for court reporter policy, training, utilization, and personnel matters.

The strength posture has improved in all grades with a total of 1528 personnel assigned to our authorized 1617 spaces (94;pc) for the 71D legal clerks. For the 71E court reporters we have 102 personnel assigned for 99 spaces (103;pc). There were 600 legal clerks (71D) graduated from the Legal Clerks' School at Fort Benjamin Harrison, Indiana, during FY

80, and 23 court reporters (71E) completed the court reporter course at the Naval Justice School, Rhode Island.

#### D. RESERVE COMPONENT POSTURE.

In the Reserve Components of the Judge Advocate General's Corps, the number of officers participating has continued to increase over the last year and a half. We now have 844 USAR judge advocates assigned to USAR judge advocate positions and 488 National Guard judge advocates assigned to National Guard judge advocate positions. Other USAR judge advocates participate in training programs but do not belong to either National Guard or USAR units. The total number of JAGC officers participating in the Reserve Component Judge Advocate General's Corps Program is 2367. The state of readiness of these Reserve Component judge advocates to assure their mobilization mission, and to work side by side with their active component counterparts, has continued to improve. Many USAR judge advocates now participate in a total mutual support program whereby these officers train in active Army judge advocate offices; this training has improved in the last year to where mutual support is no longer a buzz word for legal assistance, i.e., many of these officers are now being fully integrated into the total office environment.

The technical (On-Site) training program conducted by instructors of The Judge Advocate General's School for Reserve Components continues to be a viable program to insure that technical skills are taught to the Reserve Component judge advocates at their home site. The fiscal year 1979-1980 after action report disclosed a 38;pc increase in the number of Reserve Component judge advocates who attended this training.

On 1 November 1980, Brigadier General William H. Gibbes, a USAR judge advocate practicing law in Columbia, South Carolina, was promoted to his present grade as the Chief Judge, USALSA (MOB DES). Brigadier General Gibbes and Brigadier General Roy R.

Moscato, the Deputy Assistant Judge Advocate General for Reserve Affairs, are my "eyes and ears" for The Judge Advocate General's Reserve Program. In the future, I hope for a closer relationship between active and National Guard judge advocates. This is essential and I ask the full support of all of you. As a move in that direction, Colonel Paul Cotro-Manes, the State Staff Judge Advocate, Utah Army National Guard, was recently chosen as my special assistant for National Guard matters. His primary mission is to insure that National Guard judge advocates maintain a high state of mobilization readiness. In addition, Major Louis R. (Buddy) Hardin of the Florida Army National Guard was assigned to the Reserve Affairs Department, The Judge Advocate General's School, where he will serve as ARNG Liaison Officer.

On all fronts, active and reserve component members of the Corps are responding to the challenges of the practice of law in the Army. Soldiers and commanders recognize the high quality of legal advice they now receive and they realize the need for more legal advice as our times grow more complicated. Their support at Department of the Army has enabled the Corps to grow. We can now hire more, educate more, retain more, and promote more. The ultimate beneficiaries of this growth are our clients, the soldiers and commanders who serve with us in the Army. I know this will continue in the future and thus build an even stronger foundation for all our activities.

ALTON H. HARVEY  
Major General, USA  
The Judge Advocate General

## Disciplinary Infractions Involving USAR Enlisted Personnel: Some Thoughts for Commanders and Judge Advocates

*Major Robert R. Baldwin and Major James E. McMenis*

### I. Introduction.

The disposition of disciplinary infractions involving United States Army Reserve enlisted personnel ("reservists") involves a variety of problems and considerations which differ somewhat from those facing commanders and judge advocates in the disposition of such infractions involving enlisted personnel in the active components of the Army. Since the United States Army Reserve is a part of the Army's Total Force, commanders and judge advocates in both the active and the reserve components should be familiar with the more common problems that may arise from time to time in the disposition of disciplinary infractions involving reservists. The purpose of this article is to familiarize commanders and judge advocates in both components with some of these problems and to provide some thoughts which may be helpful in their solution. The procedures available will, of course, vary according to the duty status of the reservist.

Peculiarities in the handling of disciplinary infractions involving reservists stem largely from jurisdictional questions under the Uniform Code of Military Justice<sup>1</sup> in relation to the performance by reservists of annual training or active duty for training on the one hand and inactive duty training on the other. Annual training (AT) is an annual period of training during which troop unit personnel and certain Control Group personnel are ordered to active duty for not less than fourteen days.<sup>2</sup> Troop unit personnel may perform AT with their units of as-

<sup>1</sup>10 U.S.C. § 801 *et. seq.* (1976). Hereafter, the Uniform Code of Military Justice is referred to and cited as the "UCMJ."

<sup>2</sup>See 10 U.S.C. § 270(a) (1976); AR 310-25, Military Publications—Dictionary of United States Army Terms, at 24 (C1, 12 April 1977); AR 310-50, Military Publications—Authorized Abbreviations and Brevity Codes, at 14 (3 November 1975). See also AR 135-200, Army National Guard and Army Reserve—Active Duty

signment, or like Control Group personnel, they may be attached temporarily on an individual basis to an active component command. AT is frequently referred to as "summer camp," but may be performed during any season of the year, whether in one continuous period or in increments. Active duty for training (ADT) is a period of one or more consecutive days during which USAR personnel are ordered to active duty on an individual basis.<sup>3</sup> ADT may be performed at a reserve center or at an active component command, depending on the terms of the ADT orders. For troop unit personnel, ADT is frequently referred to as "man-days," and because so-called man-day spaces are strictly controlled, such personnel are only infrequently ordered to ADT. Control Group personnel ordered to active duty other than as AT serve in an ADT status. For troop unit personnel, inactive duty training (IDT) is normally training that is performed in 4-hour increments during which such personnel do not acquire an active duty status.<sup>4</sup> IDT is frequently referred to as "weekly drills" or "monthly drills" and may consist of a 4-hour period of duty on a weeknight (a unit training assembly or "UTA") or an 8-hour period of duty on a Saturday or Sunday (a multiple unit training assembly or, when one 8-hour day is involved, a "MUTA 2"). Troop unit personnel normally perform sixteen hours of IDT during a calendar month. Although IDT credit for retirement purposes is awarded to both troop unit and Control Group personnel for the completion of Army correspondence courses and other train-

ing activities,<sup>5</sup> IDT in the context of this article is generally limited to weekly and monthly drills performed by troop unit personnel.

While reservists serving on AT or ADT are, like members of the active components, generally subject to UCMJ jurisdiction under Article 2(1), the orders pursuant to which AT or ADT is performed contain a self-executing terminal date. UCMJ jurisdiction may properly attach with respect to an offense committed by a reservist during a period of AT or ADT. In the case of a reservist held beyond the self-executing terminal date for trial by court-martial, however, a jurisdictional problem arises as to offenses committed after the self-executing terminal date of the AT or ADT orders and the earlier of the reservist's release after disposition under the UCMJ or his or her recall to active duty pending disposition under the UCMJ.<sup>6</sup> If the correct steps are taken prior to the self-executing termination of AT or ADT orders, this jurisdictional problem can be avoided.

Article 2(3) of the UCMJ appears to subject reservists to UCMJ jurisdiction while performing IDT if certain prerequisites are met. In practice, however, this provision has been given no effect from the standpoint of *Army* reservists. Thus, USAR commanders and their staff judge advocates must be aware of various alternatives to UCMJ jurisdiction in connection with criminal and disciplinary infractions committed by reservists during IDT.

In some instances, depending upon the jurisdictional status of the installation or site where an offense is committed by a reservist (and particularly in locations which do not have exclusive federal legislative jurisdiction), disposition by civilian law enforcement authorities is the

for Training and Annual Training of Individual Members, ch. 3, Appendix A (17 October 1977); AR 140-1, Army Reserve—Mission, Organization, and Training, para. 3-18 (1 November 1979).

<sup>3</sup>See 10 U.S.C. § 672(d) (1976); AR 310-25, at 7 (C2, 1 June 1979); AR 310-50, at 7 (3 November 1975). See also AR 135-200, chs. 4 (C4, 15 June 1979), 5 (C3, 15 May 1979), Appendix A (17 October 1977); AR 140-1, para. 3-29 (1 November 1979).

<sup>4</sup>See 10 U.S.C. § 270(a); AR 310-25, at 137 (C1, 12 April 1977); AR 310-50, at 39 (3 November 1975). See also AR 140-1, para. 3-3b, c, d (1 November 1979).

<sup>5</sup>See AR 140-185, Army Reserve—Training and Retirement Point Credits and Unit Level Strength Accounting Records, para. 2-4, Table 2-1 (15 September 1979).

<sup>6</sup>But see UCMJ art. 2(7) providing jurisdiction over "[p]ersons in custody of the armed forces serving a sentence imposed by a court-martial."

practical and entirely appropriate alternative to the exercise of UCMJ jurisdiction. On the other hand, because some offenses under the UCMJ have no state law counterpart,<sup>7</sup> USAR commanders may find that it is frequently expedient and appropriate to maintain discipline through the use of administrative alternatives to the exercise of UCMJ jurisdiction.

This article first considers the disposition of criminal and disciplinary infractions committed by Army reservists while on AT or ADT from the commander's standpoint when faced with such a problem, including disposition through the use of nonpunitive disciplinary measures and nonjudicial punishment as alternatives to trial by court-martial or other judicial disposition. Because reservists frequently perform AT and ADT while attached, either individually or as part of a USAR unit, to an active component command for purposes of the administration of military justice, the procedures which should be followed in the case of a serious offense committed by a reservist during AT or ADT should be of special interest and concern to active component commanders and their staff judge advocates at installations where reservists perform such duty. Secondly, of particular interest to USAR commanders and their staff judge advocates is an evaluation of the Army's position with respect to the exercise of UCMJ jurisdiction over reservists performing IDT and various administrative alternatives to UCMJ jurisdiction which are available in an IDT setting. Although the focus of this article is on situations involving USAR enlisted personnel, the analysis of UCMJ jurisdiction over offenses committed during AT or ADT, the disposition of such offenses under the UCMJ by nonjudicial and judicial means, and the lack of

UCMJ jurisdiction over offenses committed during IDT applies with equal force to USAR officer (including warrant officer) personnel. In situations involving USAR officer personnel, however, initial action is apt to be taken at a higher level of command than the company or battery level where such action is normally taken in cases involving USAR enlisted personnel.

Considerations similar to those applicable to disciplinary problems involving USAR personnel sometimes apply to Army National Guard personnel. However, the state-versus-federal status of National Guard personnel presents a variety of problems having no applicability to USAR personnel, particularly in the area of military justice during both AT and IDT. Accordingly, disciplinary problems involving National Guard personnel are not specifically treated in this article.

## II. Reservists in AT or ADT Status.

Reservists customarily perform AT and ADT pursuant to orders with a self-executing terminal date. They are subject to UCMJ jurisdiction while performing AT and ADT and may be punished under Article 15 or tried by court-martial for offenses committed during periods of active duty.<sup>8</sup> However, the short duration of most AT and ADT (approximately two weeks in the case of AT) usually precludes trial prior to the terminal date of the self-executing AT or ADT orders. After the terminal date, UCMJ jurisdiction automatically ceases unless prior to such date, steps have been taken to attach jurisdiction and to make certain that it continues.<sup>9</sup>

Control Group reservists and troop units reservists who are *not* performing AT or ADT with their own units of assignment will usually be attached to an active component command for purposes of the administration of military

<sup>7</sup>E.g., the purely military offenses under the UCMJ, such as fraudulent enlistment or separation (art. 83), desertion (art. 85), absence without leave (art. 86), disrespect toward a superior commissioned officer (art. 89), willfully disobeying a superior commissioned officer (art. 90(2)), insubordinate conduct toward a warrant officer or a noncommissioned officer (art. 91(2), (3)), failure to obey a lawful order or regulation (art. 92) and mutiny or sedition (art. 94).

<sup>8</sup>UCMJ art. 2(1).

<sup>9</sup>Manual for Courts-Martial, United States, 1969 (Rev.), para. 11a. Hereafter, the Manual for Courts-Martial is referred to and cited as "MCM, 1969."

justice. Within the active component command, someone, whom the reservist may never even meet in the absence of having committed a disciplinary infraction, will fill the role of the reservist's unit (company or battery) commander. If such a reservist should commit a disciplinary infraction, the active component commander will be confronted with the same problems that a USAR commander would have to face if, during AT, a member of the USAR commander's command were to commit a disciplinary infraction.

When a reservist on AT or ADT commits, or is reasonably believed to have committed, some form of misconduct or disciplinary infraction, the reservist's unit commander must address the problem of what action to take. Options available to a unit commander include nonpunitive disciplinary measures and, if the misconduct constitutes one or more offenses under the UCMJ, nonjudicial punishment under Article 15 and trial by court-martial. Trial by court-martial is reserved for serious offenses under the UCMJ, and judicial action is required for the imposition of severe penalties. The penalties that a unit commander may impose directly under Article 15 for minor offenses under the UCMJ are strictly limited. Nonpunitive disciplinary measures may be used in the case of misconduct which does not constitute an offense under the UCMJ, and such measures constitute a third alternative which a unit commander should consider even in the case of some forms of misconduct which do constitute an offense under the UCMJ.<sup>10</sup>

#### A. Nonpunitive Disciplinary Measures.

Nonpunitive disciplinary measures<sup>11</sup> are administrative, corrective actions which, al-

though perhaps unpleasant to the reservist, are directed towards correction and instruction and not the infliction of a penalty or punishment. Although misconduct is sometimes deliberate and intentional, it frequently results from carelessness or lack of attention. Nonpunitive disciplinary measures permit the unit commander to teach a reservist the error of his or her ways without inflicting a penalty or seriously tarnishing the reservist's record. A unit commander's authority to take nonpunitive disciplinary measures is a function of his or her authority to command. Being nonpunitive, such measures are not generally prescribed in the UCMJ. A unit commander's selection of a particular measure may be affected by such factors as the type of misconduct involved and the reservist's state of mind and length of service. More than one nonpunitive disciplinary measure may be taken in an appropriate case. Some of the nonpunitive disciplinary measures available to a unit commander include admonition and reprimand, restraint or restriction, administrative reduction, corrective training, counseling and the withdrawal of discretionary benefits.

*Admonition and Reprimand.* In response to a specific act of misconduct, a unit commander may issue an oral or written admonition or reprimand as an administrative, corrective measure.<sup>12</sup> A corrective admonition is a warning that the conduct involved is considered to be misconduct and that its repetition will likely result in the taking of more serious action.<sup>13</sup> A corrective reprimand is a rebuke, reproof or censure (strong criticism) for failing to comply

<sup>10</sup>See generally FM 27-1, Legal Guide for Commanders, para. 8-1 (20 September 1974).

<sup>11</sup>For an evaluation of nonpunitive disciplinary measures available to commanders with respect to enlisted personnel in the active components of the Army, see FM 27-1, ch. 8 (20 September 1974). Apparently, no Army publication provides a similar evaluation applicable to reservists. Because of the limited scope of the

cited authority, reliance upon the references appearing therein may sometimes be misplaced in the case of reservists. Nevertheless, guidelines for the use of nonpunitive disciplinary measures as discussed in FM 27-1, para. 8-2, generally apply with equal force to reservists while on AT or ADT.

<sup>12</sup>MCM, 1969, para. 128c; AR 27-10, Legal Services—Military Justice, para. 3-5b (C12, 12 December 1973); FM 27-1, para. 8-5a (20 September 1974).

<sup>13</sup>AR 27-10, para. 3-5b (C12, 12 December 1973); FM 27-1, para. 8-5b (20 September 1974).

with the required standard of conduct.<sup>14</sup> An oral admonition or reprimand may be administered to a reservist by the reservist's unit commander at a time and place of the commander's choosing.<sup>15</sup> A written admonition or reprimand is prepared in letter form and should contain a statement that the admonition or reprimand is being imposed as an administrative measure and not as nonjudicial punishment under Article 15, UCMJ.<sup>16</sup> A written admonition or reprimand may be included in the temporary section of a reservist's Military Personnel Records Jacket (MPRJ), but only after a copy has been referred to the reservist for acknowledgment or rebuttal.<sup>17</sup>

*Restraint or Restriction.* Apart from his or her authority to impose restriction as a form of nonjudicial punishment under Article 15, a unit commander has the authority to impose restraint or restriction upon a reservist for administrative purposes (e.g., pending inquiry concerning an alleged offense, to insure the reservist's presence within the unit area, or as a precaution to keep the reservist from being exposed to the temptation of further, similar misconduct).<sup>18</sup> A reservist under administrative restraint or restriction may be required to participate in all normal military duties and activities.<sup>19</sup>

*Administrative Reduction.* An enlisted reservist may be administratively reduced by one pay grade for inefficiency or misconduct.<sup>20</sup> "Inefficiency" includes technical incompetence and

any act or conduct reflecting that the reservist "lacks those abilities and qualities required and expected of a person of his [or her] grade and experience."<sup>21</sup> For purposes of administrative reduction, "misconduct" consists of "those acts or omissions which may be equated to a violation of the punitive articles of the UCMJ."<sup>22</sup> In general, a company or battery commander may reduce a reservist in pay grade E3 or E4;<sup>23</sup> however, a commander below the grade of major may not reduce a specialist or a noncommissioned officer for misconduct.<sup>24</sup> A company or battery commander may recommend to higher authority the administrative reduction of a reservist in pay grade E5 or above for inefficiency or misconduct and, in the case of a commander below the grade of major, the administrative reduction of a specialist or a noncommissioned officer (in pay grade E4) for misconduct. A reservist in pay grade E5 or above, however, may be reduced for inefficiency or misconduct only upon the recommendation of a board composed of officers and senior noncommissioned officers.<sup>25</sup> Written notice of the specific allegations on which a proposed reduction is based must be given to the reservist in all cases, and the reservist must be given the opportunity to submit statements on his or her own behalf.<sup>26</sup> If reduced, a reservist has the right to submit an appeal.<sup>27</sup>

*Corrective Training.* Corrective training may be used when a reservist demonstrates the

<sup>14</sup> AR 27-10, para. 3-5b (C12, 12 December 1973); FM 27-1, para. 8-5c (20 September 1974).

<sup>15</sup> FM 27-1, para. 8-5d (20 September 1974).

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* For further guidance on administrative reprimands, see AR 600-37, Personnel—General—Unfavorable Information, ch. 2 (18 May 1977).

<sup>18</sup> AR 27-10, para. 3-5c (C12, 12 December 1973).

<sup>19</sup> MCM, 1969, para. 20b.

<sup>20</sup> AR 140-158, Army Reserve—Enlisted Personnel Classification, Promotion, and Reduction, para. 3-38a, b (C7, 1 July 1980).

<sup>21</sup> *Id.* para. 3-38a.

<sup>22</sup> *Id.* para. 3-38b.

<sup>23</sup> A commander's authority to reduce from a particular grade generally depends upon his or her authority to promote to that grade. *Id.* para. 3-2b. A company or battery commander has authority to promote to pay grades E3 and E4. *Id.* para. 3-2a, Table 3-1.

<sup>24</sup> *Id.* para. 3-38b.

<sup>25</sup> *Id.* para. 3-37.

<sup>26</sup> *Id.* para. 3-38a(1), b.

<sup>27</sup> *Id.* But see AR 140-158, para. 3-39a (C7, 1 July 1980), indicating in apparent conflict with para. 3-38b that appeals from reductions for misconduct are governed by UCMJ art. 15.

need for additional training.<sup>28</sup> Corrective training is appropriate only when there is a direct relationship with the infraction involved (e.g., a reservist who appears in improper uniform may be required to attend special instruction in the correct wearing of the uniform). Corrective training may not be used as a punitive measure and, therefore, must not have even the appearance of punishment. If a reservist believes that additional, corrective training is punitive, then the benefits and effects of all training and instruction are apt to be compromised.

*Counseling.* Counseling generally involves advising a reservist of his or her errors or omissions.<sup>29</sup> It may be written or oral, but is usually oral. Counseling may be performed personally by a unit commander or by his or her personal representative. In the course of counseling, an effort should be made to determine what caused the reservist's misconduct, why the reservist failed to adhere to the proper standards of conduct, and the reasons for the reservist's negative or indifferent attitude. Properly performed, counseling can provide helpful advice or the necessary inspiration for proper conduct in the future. Depending upon the problem involved, the reservist may be referred to a professional counselor (e.g., a chaplain or a judge advocate).

*Withdrawal of Discretionary Benefits.* In order to maintain discipline, a unit commander may withhold any privileges he or she is authorized to confer.<sup>30</sup> In addition to the pass privilege, there are other privileges which may be withheld. For example, a reservist may be

barred from a specific area or activity (e.g., a reservist who commits an assault in the dayroom may be barred from that room). Although a unit commander cannot withhold privileges over which he or she has no control (e.g., driving on post or PX privileges), a unit commander may recommend the withdrawal of such privileges to higher authority. The privilege withheld should have a significant relationship with the misconduct or offense involved (e.g., the unit commander should not recommend the withdrawal of PX privileges for an assault in the dayroom). When a unit commander is authorized to confer a privilege that is to be withheld, he or she simply informs the reservist that the privilege has been revoked for a specific period of time.<sup>31</sup> When the privilege to be withheld is within the power of higher authority to confer, a unit commander may submit a written request through channels that the reservist's privilege be withheld.<sup>32</sup> Grounds for the recommended withdrawal of a privilege should be stated in the request.

*Reservists Attached to Active Component Commands.* When a troop unit reservist on AT or ADT is attached temporarily on an individual basis to an active component command for purposes of the administration of military justice, the active component commander filling the role of the reservist's unit commander may determine that misconduct or disciplinary infractions should be disposed of by the use of nonpunitive disciplinary measures. In such a case, if time does not permit the taking of such measures or if the active component commander is without authority to take a particular measure (e.g., administrative reduction for misconduct), the reservist's conduct may be documented and referred to the commander of his or her unit of assignment for appropriate action after the reservist has returned to an IDT status.

drawal of discretionary benefits in an IDT setting may be of little constructive value to the maintenance of discipline.

<sup>28</sup> Corrective training as described in FM 27-1, para. 8-7 (20 September 1974), applies with equal force to reservists while on AT or ADT, and even while performing IDT. See also AR 600-20, Personnel—General—Army Command Policy and Procedures, para. 5-6 (15 October 1980).

<sup>29</sup> Counseling as described in FM 27-1, para. 8-6 (20 September 1974), applies with equal force to reservists while on AT, ADT or IDT.

<sup>30</sup> The discussion on the deferment of discretionary benefits appearing in FM 27-1, para. 8-3a, b (20 September 1974), applies equally to reservists while on AT or ADT. Because of the limited duration of IDT, the with-

<sup>31</sup> *Id.* para. 8-3c.

<sup>32</sup> *Id.*

## B. Nonjudicial Punishment.

When a reservist commits or is reasonably believed to have committed one or more offenses under the UCMJ, the reservist's unit commander (including an active component commander filling the role of a reservist's unit commander) may consider the imposition of nonjudicial punishment under Article 15, UCMJ. Although not a hard and fast rule, offenses which are suitable for disposition under Article 15 are "minor" offenses, namely, offenses which constitute crimes under the UCMJ but not including offenses which if tried by a general court-martial could result in the imposition of a dishonorable discharge or confinement at hard labor for more than one year.<sup>33</sup>

Company grade officers in command (*e.g.*, company or battery commanders in the grade of captain or below) have immediate Article 15 jurisdiction over personnel assigned or attached to their commands.<sup>34</sup> In most cases, the company or battery is the level of command at which nonjudicial punishment should be administered.<sup>35</sup> While unit commanders should make maximum use of nonpunitive disciplinary measures and should avoid resorting to nonjudicial punishment under article 15, nonjudicial punishment may nevertheless be appropriate to avoid blemishing a reservist's record with a court-martial conviction or to correct and educate a reservist who has in the past not benefited from the use of nonpunitive disciplinary measures.<sup>36</sup>

A unit commander's authority to impose nonjudicial punishment carries with it the grave responsibility of exercising that authority in

a completely judicious manner.<sup>37</sup> Accordingly, unit commanders must be familiar with the requirements, policies, limitations and procedures for the imposition of nonjudicial punishment set forth in Chapter XXVI, MCM, 1969; Chapter 3, AR 27-10; and Chapter 3, FM 27-1.<sup>38</sup>

Upon receiving information that a member of his or her command may have committed an offense under the UCMJ, the unit commander having immediate Article 15 jurisdiction should conduct (or cause to be conducted) a preliminary inquiry to determine (1) whether the alleged misconduct actually occurred, (2) whether the misconduct constitutes an offense under the UCMJ and (3) whether the reservist in question committed the offense.<sup>39</sup> If it is determined on the basis of the unit commander's preliminary inquiry that the reservist committed an offense under the UCMJ, the unit commander must then decide upon an appropriate disposition, taking into account such relevant factors as (1) the period or time remaining during AT or ADT and (2) whether the misconduct is sufficiently serious that it would likely be referred to trial by the appropriate court-martial convening authority.

In the course of deciding upon an appropriate disposition, the unit commander may consult with an available USAR judge advocate or, if none, with the staff judge advocate of the installation where the reservist is performing AT or ADT. In any event, however, a unit commander must exercise his or her own personal discretion (without interference or direction by any superior) in deciding whether to dispose of misconduct under Article 15, both as to wheth-

<sup>33</sup>See MCM, 1969, para. 128b (also paras. 126b, 127c); AR 27-10, para. 3-3d (C12, 12 December 1973).

<sup>34</sup>AR 27-10, paras. 3-2a, 3-3a, b (C18, 1 January 1979).

<sup>35</sup>See AR 27-10, para. 3-6 (C12, 12 December 1973).

<sup>36</sup>MCM, 1969, para. 128c; AR 27-10, para. 3-4a (C12, 12 December 1973).

<sup>37</sup>AR 27-10, para. 3-13 (C20, 15 August 1980).

<sup>38</sup>Although geared toward use by commanders in administering nonjudicial punishment to enlisted personnel in the active components of the Army, FM 27-1, ch. 3 (20 September 1974), is generally applicable in administering nonjudicial punishment to reservists while performing AT or ADT.

<sup>39</sup>MCM, 1969, para. 32b; FM 27-1, paras. 2-2b, 3-9 (20 September 1974).

er nonjudicial punishment should be imposed at all and, if so, as to the amount and nature of the punishment.<sup>40</sup> Since a reservist generally has the right to refuse nonjudicial punishment and to demand trial by court-martial,<sup>41</sup> a unit commander considering whether disposition under Article 15 is appropriate should be aware of the potentially adverse effect on discipline of a reservist's demand for trial by court-martial if it turns out (1) that the reservist is not extended on active duty for purposes of trial or (2) that charges against the reservist are not referred to trial by the appropriate court-martial convening authority. Disposition through the use of a nonpunitive disciplinary measure such as a one pay grade reduction for misconduct is apt to be an even more effective means for maintaining discipline than a reduction imposed under Article 15 since the use of an administrative reduction avoids the risk (or likelihood) that the reservist will demand trial by court-martial.

If a unit commander concludes that disposition under Article 15 is appropriate, then especially in the case of USAR commanders who become involved with Article 15 only on an infrequent basis, the scenario attached to AR 27-10 as Appendix E should be used as a guide for conducting the required proceedings. Use of the scenario will help to assure that Article 15 proceedings are conducted in an orderly fashion and in compliance with all the requirements of law and regulation applicable to such proceedings and the procedural safeguards of the reservist.<sup>42</sup> Because of the normally short duration of AT and ADT, it may not be unreasonable to allow a reservist considerably less than the normal 72 hours to consult with counsel before deciding whether to demand trial by court-martial,<sup>43</sup> and to expedite matters, a unit commander should direct the reservist to a judge advocate for advice.

<sup>40</sup>AR 27-10, para. 3-4b (C12, 12 December 1973).

<sup>41</sup>*Id.* para. 3-11 (C20, 15 August 1980).

<sup>42</sup>*Id.* para. 3-13c.

<sup>43</sup>See AR 27-10, para. 3-12b (C20, 15 August 1980).

If a company grade unit commander does not feel that his or her punishment authority under Article 15 is sufficiently appropriate for the misconduct of a reservist, the case may be forwarded to the unit commander's field grade commander with a request that the field grade commander exercise his or her own authority under Article 15.<sup>44</sup> A company grade unit commander should, however, be aware of the fact that because of the normally short duration of AT and ADT, a more severe forfeiture of pay may be imposed as nonjudicial punishment by a company grade officer in command than by a field grade officer in command. For example, if nonjudicial punishment is imposed with ten days of AT remaining, a company grade officer in command may impose a maximum forfeiture of seven full days of pay, but since a field grade commander's authority to impose forfeitures is limited to one-half of one month's pay for two months, a field grade officer in command may impose a maximum forfeiture of only one-half of each day's pay for ten days (equivalent, in the aggregate, to only five full days of pay).<sup>45</sup>

### C. Judicial Punishment.

If a unit commander determines that a reservist's misconduct during AT or ADT involves a serious offense under the UCMJ and that disposition by means of nonpunitive disciplinary measures of nonjudicial punishment is inadequate or inappropriate, then the commander must come to grips with disposition by judicial means, whether under the UCMJ or by reference to civilian law enforcement authorities (federal, state or local, although state and

<sup>44</sup>*Id.* para. 3-6 (C12, 12 December 1973).

<sup>45</sup>Compare UCMJ art. 15(b)(2)(c) with UCMJ art. 15(b)(2)(H)(iii). It is arguable that the statutory limitation on the authority of a field grade officer in command to impose a forfeiture as nonjudicial punishment is a gross limitation so that in the example in the text, such a commander could impose a maximum forfeiture of ten full days of pay since the total amount of the forfeiture would not exceed one-half of one month's pay. Nevertheless, any doubt as to a proper interpretation of Article 15(b)(2)(H)(iii) should be resolved in favor of the more conservative approach taken in the text.

local authorities would have jurisdiction only if the AT or ADT installation or site is *not* subject to exclusive federal legislative jurisdiction).

If the offense involved (*e.g.*, larceny, drug abuse, assault) is not a purely military offense,<sup>46</sup> referral to state or local authorities who are willing and able to exercise their jurisdiction is an expedient and clearly appropriate solution. It should be noted that a reservist convicted by a civil court of an offense which if tried under the UCMJ would draw a maximum penalty of death or a year or more of confinement is subject to separation from the USAR,<sup>47</sup> and if separation is recommended in such a case, the reservist's service will normally be characterized as having been "under other than honorable conditions."<sup>48</sup> Approval of a recommendation that a reservist be separated under other than honorable conditions because of a civil conviction will result in the reservist being both reduced to pay grade E1<sup>49</sup> and discharged.<sup>50</sup> Alternatively, if a reservist receives a civil conviction for an offense not warranting discharge, he or she may be administratively reduced one or more pay grades by the commander having reduction authority.<sup>51</sup> In any event, if the offense committed during AT or ADT is a purely military offense or if after conferring with a USAR or active component judge advocate the unit commander decides to proceed under the UCMJ, then various procedural obstacles must be overcome.<sup>52</sup>

<sup>46</sup>For examples of purely military offenses, see note 7 *supra*.

<sup>47</sup>AR 135-178, Army National Guard and Army Reserve—Separation of Enlisted Personnel, para. 7-24 (C1, 1 February 1979).

<sup>48</sup>*Id.* para. 7-3 (C3, 15 August 1980).

<sup>49</sup>*Id.* paras. 7-28b (C1, 1 February 1979), 8-10a (C3, 15 August 1980); AR 140-158, para. 3-38c (C7, 1 July 1980).

<sup>50</sup>AR 135-178, para. 7-28a (C1, 1 February 1979).

<sup>51</sup>AR 140-158, para. 3-38e (C7, 1 July 1980).

<sup>52</sup>For a discussion of the various jurisdictional problems associated with self-executing orders, see DA Pam

In general, court-martial jurisdiction attaches to a reservist for an offense committed while on AT and ADT by the taking of action with a view towards trial.<sup>53</sup> Apprehension, arrest, confinement or the filing of charges is sufficient to attach jurisdiction, and once jurisdiction attaches with respect to an offense prior to the self-executing terminal date of AT or ADT orders, it continues for all purposes with respect to the offense, from the filing of charges through the completion of any punishment imposed.<sup>54</sup> If jurisdiction has not attached prior to the self-executing terminal date of AT or ADT orders, a reservist generally may not be tried by court-martial for any offense committed while on AT or ADT.<sup>55</sup>

Even if jurisdiction properly attaches with respect to an offense committed before the self-executing terminal date of AT or ADT orders, there is no jurisdiction over offenses committed subsequent to the self-executing terminal date (and, in light of Article 2(7), UCMJ, prior to sentencing) unless the reservist is properly extended on active duty prior to the self-executing termination of the AT or ADT orders. The problem of post-termination offenses has been considered in two cases.

In *United States v. Mansbarger*,<sup>56</sup> a USAR lieutenant was tried for two periods of AWOL, the second of which occurred after the terminal date of his self-executing orders. The charge for the first period of AWOL was preferred before the terminal date, but the terminal date was not extended until nearly two weeks after it had occurred. The second period of AWOL occurred during this two-week period. On these facts, the Army Board of Review concluded that there was no UCMJ jurisdiction

27-174, Military Justice—Jurisdiction of Courts-Martial, para. 4-4b (22 November 1976).

<sup>53</sup>MCM, 1969, para. 11d.

<sup>54</sup>*Id.*; *United States v. Willeford*, 5 M.J. 634 (A.F.C.M.R. 1978).

<sup>55</sup>MCM, 1969, para. 11a.

<sup>56</sup>20 C.M.R. 449 (A.B.R. 1955).

over the second period of AWOL and sustained only the conviction for the first period of AWOL. The board further noted that the exercise of jurisdiction over one offense committed prior to the terminal date of self-executing orders does not automatically extend orders so as to provide jurisdiction over offenses committed after the self-executing termination of such orders.<sup>57</sup> In *United States v. Hamm*,<sup>58</sup> a case involving an enlisted member of the Oklahoma National Guard, the government conceded the lack of jurisdiction over charges of larceny and escape committed after the terminal date of self-executing orders during the period while the accused was being held for trial on a robbery charge with respect to which jurisdiction had properly attached before the self-executing terminal date.

From these decisions, it follows that if the AT or ADT orders of a reservist are properly extended before their self-executing termination so as to avoid a separation from active duty, court-martial jurisdiction may attach to any offenses committed by the reservist during the extended period of his or her active duty.<sup>59</sup> Extension orders may be verbal or written;<sup>60</sup> however, it is advisable to confirm a verbal order in writing at the earliest possible time. Otherwise, at a subsequent trial involving an offense committed after the original terminal

date, the issuance of the extension order may become a factual issue.

Whenever possible, offenses committed by reservists during AT or ADT are to be disposed of by administrative action, under Article 15 or by referral to federal, state or local law enforcement authorities, and the exercise of UCMJ jurisdiction is limited to cases involving serious offenses which cannot be disposed of by such other means.<sup>61</sup> When UCMJ jurisdiction is exercised as to a serious offense committed by a reservist while at AT or ADT, current policy requires that the terminal date of the self-executing AT or ADT orders be extended pending the disposition of court-martial charges.<sup>62</sup> For Control Group reservists, the commander of the Reserve Components Personnel and Administration Center has authority to extend AT or ADT orders, and for troop unit reservists, the area commander has such authority.<sup>63</sup> The request for extension is made by the active component commander exercising general court-martial jurisdiction over the reservist.<sup>64</sup>

#### D. A Commander's Checklist.

In order to assure the prompt and proper processing of a reservist suspected of having committed an offense under the UCMJ while on

<sup>57</sup> 20 C.M.R. 449, 454.

<sup>58</sup> 36 C.M.R. 656 (A.B.R.), *petition denied*, 16 U.S.C.M.A. 655, 36 C.M.R. 541 (1966). In *Hamm*, the accused was on active duty not for AT or ADT but for the purpose of receiving basic combat training and advanced individual training shortly after his initial enlistment. Today, reservists on active duty for such purposes are on initial active duty training (IADT). See 10 U.S.C. § 511(d) (1976); AR 310-25, at 140 (15 September 1975); AR 310-50, at 39 (3 November 1975); AR 135-200, ch. 2, sec. I (C5, 15 December 1979). IADT is, therefore, another period of active duty performed by reservists pursuant to orders with a self-executing terminal date.

<sup>59</sup> DAJA-CL 1975/2215, paras. 3, 4 (6 August 1975).

<sup>60</sup> See *United States v. Mansbarger*, *supra* note 56 at 452; DAJA-CL 1975/2215, para. 3 (6 August 1975).

<sup>61</sup> Letter from FORSCOM (AFPR-RC) to Commanders, CONUSA and FORSCOM Installations (20 September 1975), Extension of AT/ADT Orders of USAR Personnel Pending Disciplinary Action, para. 4 (hereafter cited as FORSCOM letter (20 September 1975)); Letter from TRADOC (ATJA) to Commanders, TRADOC Installations (3 August 1976), Court-Martial Jurisdiction Over USAR Personnel on Annual Training/Active Duty Training (AT/ADT), para. 4 (hereafter cited as TRADOC letter (3 August 1976)). The texts of the FORSCOM and TRADOC letters are reproduced at the conclusion of this article as Appendix A and Appendix B, respectively.

<sup>62</sup> FORSCOM letter (20 September 1975), para. 3; TRADOC letter (3 August 1976), para. 3.

<sup>63</sup> FORSCOM letter (20 September 1975), para. 2; TRADOC letter (3 August 1976), para. 2.

<sup>64</sup> FORSCOM letter (20 September 1975), para. 3; TRADOC letter (3 August 1976), para. 3.

AT or ADT, the unit commander having immediate Article 15 jurisdiction should take the following actions *before* the terminal date of the reservist's self-executing AT or ADT orders:

1. Conduct a preliminary inquiry into the suspected offense or offenses so that an intelligent disposition can be made.<sup>65</sup> If the preliminary inquiry includes an interview of the suspected reservist, the unit commander should start the interview by warning the reservist of his or her rights under Article 31, UCMJ.<sup>66</sup>

2. Consider taking nonpunitive disciplinary measures<sup>67</sup> or imposing nonjudicial punishment under Article 15, UCMJ.<sup>68</sup> Nonpunitive disciplinary measures are often the most effective means available to a unit commander for disposing of minor disciplinary infractions, including most minor offenses under the UCMJ.

3. If the unit commander determines that disposition through the use of nonpunitive disciplinary measures or under Article 15 is not appropriate, or if disposition under Article 15 is proposed and the reservist refuses nonjudicial punishment and demands trial by court-martial, the unit commander should promptly confer with an available USAR judge advocate or, if none, with the staff judge advocate of the installation or site where the reservist is performing AT or ADT.

4. If it is determined that court-martial jurisdiction will be exercised (*i.e.*, because the situation involves a serious offense as to which federal, state or local law enforcement authorities will not or, in the case of a purely military offense, cannot exercise jurisdiction), the unit commander should promptly take the following additional actions which, except for (f) below, should be carried out concurrently:

(a) Take action against the reservist with a view towards trial.<sup>69</sup>

(b) Initiate suspension of favorable personnel actions.<sup>70</sup> Questions with respect to the suspension of favorable personnel actions should be directed to the adjutant general of the USAR unit or of the active component installation where the reservist is performing AT or ADT.

(c) Prepare and process the Charge Sheet (DD Form 458).<sup>71</sup>

(d) Read the charges to the accused reservist.<sup>72</sup>

(e) Through appropriate channels, request the adjutant general of the active component installation where the reservist is performing AT or ADT to obtain authority for and to issue orders extending the active duty status of the accused reservist.<sup>73</sup> If not previously stated in the accused reservist's AT or ADT orders, the orders extending the reservist on active duty should attach the reservist to the AT or ADT installation for purposes of the administration of military justice. The AT or ADT installation will issue appropriate accession orders assigning the accused reservist to a unit at the installation.

(f) Deliver the charge sheet, the accused reservist and his or her MPRJ to the gaining

<sup>65</sup>See notes 53-55 *supra* and accompanying text.

<sup>70</sup>AR 600-31, Personnel—General—Suspension of Favorable Personnel Actions for Military Personnel in National Security Cases and Other Investigations and Proceedings, para. 5a(2) (15 September 1979). While favorable personnel actions may be suspended pending the disposition of charges, initiating the suspension of favorable personnel actions in itself is an administrative action and not an action with a view towards trial such as would cause UCMJ jurisdiction to attach to a particular offense. *United States v. Hamm*, 36 C.M.R. 656, 659-60 (A.B.R. 1966).

<sup>71</sup>See AR 27-10, paras. 2-2, 2-3 (C20, 15 August 1980); FM 27-1, ch. 4 (20 September 1974).

<sup>72</sup>MCM, 1969, para. 32f(1); FM 27-1, para. 4-5b (20 September 1974).

<sup>73</sup>See notes 63-64 *supra*.

<sup>66</sup>MCM, 1969, para. 32b; FM 27-1, paras. 2-2b, 3-9 (20 September 1974).

<sup>67</sup>See FM 27-1, para. 2-5 (20 September 1974).

<sup>68</sup>See notes 11-32 *supra* and accompanying text.

<sup>69</sup>See notes 33-45 *supra* and accompanying text.

commander for processing through normal channels at the AT or ADT installation.

5. The unit commander should make and retain detailed personal notes of all that transpires with respect to an accused reservist and the offense or offenses of which he or she is suspected. Since time is of the essence in the processing of an accused reservist, all communications should be made by telephone and, if necessary, confirmed in writing at a later time.

### III. Reservists in *IDT* Status.

#### A. UCMJ Jurisdiction at *IDT*.

Article 2(3), UCMJ, by its terms, provides authority for subjecting reservists in all services to the provisions of the UCMJ "... while they are on inactive duty training authorized by written orders which are voluntarily accepted by them and which specify that they are subject to this chapter." To properly consider the applicability of this jurisdictional grant, it is necessary to review the relevant legislative history.

Prior to enactment of the UCMJ, the Army had had no jurisdiction over reservists under the Articles of War. The Navy, however, had exercised jurisdiction over "[a]ll members of the Naval Reserve when ... authorized training duty with or without pay, drill, or other equivalent instruction or duty ... or while wearing a uniform prescribed for the Naval Reserve ... ." <sup>74</sup> Accordingly, Congress was forced to accommodate these diametrically opposed positions when enacting a Uniform Code applicable to all the services. The resulting compromise attempted to limit the jurisdiction formerly held by the Navy and to create jurisdiction for the Army and the newly established Air Force. The legislative history clearly indicates the understanding of Congress that this jurisdictional grant would be rarely utilized against reservists in all services during *IDT* or

in connection with other routine reserve functions.

In the House of Representatives, the purpose of Article 2(3) was explained by Mr. Felix Larkin, then Assistant General Counsel, Office of the Secretary of Defense, as follows:

[W]e should not have for all purposes and all services jurisdiction over Reserve personnel when they are on inactive duty—while they are taking correspondence courses at home or ... attending meetings or ... wearing their uniform on parades and the various other provisions by virtue of which the Navy now does have jurisdiction over their people.

....

... [I]t is [however] entirely appropriate ... that they be subject to the sanctions of the uniform code if they commit offenses while [using planes or handling expensive, dangerous or heavy equipment during week-end drills with their units]. <sup>75</sup>

Mr. Larkin further explained:

[W]hen they voluntarily come in under written orders they become subject to the code. The written orders we contemplate would spell out the voluntary nature of this type of duty and the fact that they become subject to the military code, and if they are unwilling to do that they do not come on duty. <sup>76</sup>

Mr. Larkin proposed some additional wording (which was accepted) in an effort to "clearly exclude ... other types of inactive duty training" (e.g., correspondence courses). <sup>77</sup> The Senate also clearly understood that Article 2(3) was "intended to afford control over persons on inactive duty involving the use of dangerous or expensive equipment—such as weekend flight training." <sup>78</sup>

<sup>75</sup>*Id.* at 860.

<sup>76</sup>*Id.*

<sup>77</sup>*Id.* at 863.

<sup>78</sup>S. Rep. No. 486, 81st Cong., 1st Sess. 7 (1949).

<sup>74</sup>Hearings on H.R. 2498 Before a Subcomm. of the House Comm. on Armed Forces, 81st Cong., 1st Sess. 859 (1949).

What, then, has been the Army's position concerning jurisdiction over reservists performing IDT? During debate on the Senate floor, Senator Kefauver stated that he understood "the Army did not expect to use it at all."<sup>79</sup> Senator Kefauver's understanding has been consistently manifested in a series of opinions of The Judge Advocate General of the Army to the effect that the legislative history indicates that extension of UCMJ jurisdiction to USAR personnel on inactive duty would need to be justified and that no justification can be found.<sup>80</sup> Thus, although Article 2(3) itself and its legislative history would support limited UCMJ jurisdiction over Army reservists during IDT, there is in fact no such jurisdiction presently available to USAR commanders because of the longstanding Army policy based upon numerous TJAG opinions.

Each of the other services has approached the issue differently. The Air Force extends jurisdiction to pilot personnel on flight training, and the Navy (including the Marine Corps) extends jurisdiction to all personnel as long as the requirements of Article 2(3) are met.<sup>81</sup> Although perhaps of merely academic interest from the Army's standpoint, the difficulties encountered by the other services under Article 2(3) are nevertheless germane.

*In re La Plata ex rel. Fisher*<sup>82</sup> involved a Marine reservist who had been apprehended

for AWOL when he did not report for active duty to which he had been involuntarily ordered for failure to attend the required number of drills.<sup>83</sup> A petition for writ of habeas corpus filed on behalf of the reservist claimed that the reservist was not subject to UCMJ jurisdiction since he had not voluntarily accepted the orders bringing him on duty as required by Article 2(3). The district court found that Article 2(3) did not apply since the reservist had been ordered to active duty and not to inactive duty. It cited the legislative history to show "that Congress intended that subsection 3 apply to inactive reservists who merely attended short periodic drills or training, participated in weekend flights or who handled dangerous or expensive equipment."<sup>84</sup>

The Court of Military Appeals first considered the application of Article 2(3) in *United States v. Schuering*.<sup>85</sup> The accused, a Marine reservist, voluntarily accepted orders for IDT. These orders specifically informed him that he was subject to the UCMJ during "regular drills" and "periods of inactive duty training." At a regularly scheduled drill, the accused admitted to wrongfully taking property of the government. Although he requested nonjudicial punishment under Article 15, the matter was referred to the next superior command with a recommendation for trial by special court-martial. The accused was placed under no restraint and in fact was allowed to go home at or near the normal departure time. Charges were later referred to trial and served on the accused on non-drill days. He was ordered to "temporary active duty" for trial, convicted pursuant to his plea, and sentenced to a bad conduct discharge, confinement at hard labor for six months and partial forfeiture of pay for six months. The conviction was reversed on jurisdictional grounds (1) because action had not been taken with a view towards trial (i.e., ju-

<sup>79</sup>96 Cong. Rec. 1357 (1950).

<sup>80</sup>JAGJ 1966/8771 (4 November 1966), JAGJ 1958/3016 (6 May 1958), JAGJ 1955/7902 (27 September 1955), JAGJ 1954/9350 (8 December 1954) as cited in Note, *Constitutional Law: Military Jurisdiction Over Inactive Reservists*, 27 JAG J. 129, 135 n.41 (Fall 1972). See also DAJA-CL 1976/1869 (24 June 1976); JAGA 1967/4322 (20 September 1967) as digested in 68-8 JALS 17 (DA Pam 27-68-8, at 17).

<sup>81</sup>For a discussion of the implementation of Article 2(3), UCMJ, in the different services, see Saxon, *The Weekend Warrior and the Uniform Code of Military Justice: Does the Military Have Jurisdiction Over Week-end Reservists*, 7 Cal. W. L. Rev. 238 (1970). See also Gerwig, *Court-martial Jurisdiction over Week-end Reservists*, 44 Mil. L. Rev. 123 (1969).

<sup>82</sup>174 F. Supp. 884 (E.D. Mich. 1959).

<sup>83</sup>The statutory authority for such involuntary call to active duty is found at 10 U.S.C. § 270 (1970). See note 162 *infra*.

<sup>84</sup>174 F. Supp. 884, 886.

<sup>85</sup>16 C.M.A. 324, 36 C.M.R. 480 (1966).

jurisdiction had not attached to the offense or the accused within the scope of MCM, 1969, para. 11d) at a time when the accused was subject to the UCMJ under Article 2(3) and (2) because the court-martial lacked jurisdiction over his person at the time of trial since the order to "temporary active duty" for trial was not an order to IDT within the scope of Article 2(3). The court's rationale was that the accused had not been placed under any restraint, moral or physical and, "therefore, that the court-martial had no jurisdiction over the accused and the offense at the time of trial."<sup>86</sup> The court noted that:

A reservist is subject to the Uniform Code of Military Justice only under limited circumstances. These are as follows: (1) He must actually be "on inactive duty training"; (2) the training must be performed pursuant to written orders; (3) the orders must specify that he is amenable to the Uniform Code during his training or drill periods; and (4) the orders must have voluntarily been accepted by him.<sup>87</sup>

In connection with reservists performing IDT, the court further noted, Article 3(a)<sup>88</sup> notwithstanding, that:

[A] court-martial may try an accused for an offense committed when he was subject to military law, if he is also subject to such law at the time of trial, notwithstanding

there was an interval of time between the offense and the trial when he was not amenable to military law . . . . We hold, therefore, that in each period of training duty the accused is liable to trial by court-martial for an offense committed by him when subject to military law . . . .<sup>89</sup>

Finally, the court noted that:

It is well-settled that jurisdiction which attaches by timely commencement of proceedings against the accused survives a change of status on his part.<sup>90</sup>

The court observed that the Air Force is more restrictive in its use of the jurisdiction conferred by Article 2(3), quoting an Air Force TJAG opinion that "jurisdiction may not be lawfully asserted unless prior to the termination of the training period, jurisdiction has attached by commencement of action with a view to trial—as by apprehension, arrest, confinement, filing of charges or *other similar action*" (emphasis supplied by the court).<sup>91</sup>

For all the jurisdictional prerequisites to be met under Article 2(3), a reservist (1) must be subject to the UCMJ by voluntary acceptance of written orders so providing, (2) must commit a violation while thus subject to the UCMJ, (3) must have had action taken against him or her with a view towards trial while so subject, and (4) must be tried while so subject. The holding

<sup>86</sup>*Id.* at 331, 36 C.M.R. at 487.

<sup>87</sup>*Id.* at 326, 36 C.M.R. at 482.

<sup>88</sup> Article 3(a) expands UCMJ jurisdiction to avoid the loss of jurisdiction over serious offenses committed in a prior enlistment where there has been a break in service between two periods of enlistment. In *Schuering*, the court rejected the argument that Article 3(a) should be construed to limit the jurisdictional grant in Article 2(3) over reservists in the performance of IDT. 16 C.M.A. 324, 328, 36 C.M.R. 480, 484. In a separate opinion (*id.* at 331, 36 C.M.R. at 487) concurring only in the result reached by the majority, Judge Ferguson observed that since the court had found no UCMJ jurisdiction on other grounds:

[I]t is unnecessary to go further and construe . . . Article 3 . . . in its application to the trouble-

some question of exercise of the power to try ordinary citizens by courts-martial on the basis of their tenuous connection with the armed forces through membership in the reserve forces and attendance at inactive duty training drills. Such an extraordinary exercise of military judicial authority over our modern day militiamen bears the closest examination—even from the constitutional standpoint—particularly when the civil courts are open and functioning throughout the Nation with the authority to punish all who transgress its laws, reservist or no.

<sup>89</sup> 16 C.M.A. 324, 328, 36 C.M.R. 480, 484.

<sup>90</sup>*Id.* at 330, 36 C.M.R. at 486.

<sup>91</sup> OP JAGAF 1953/9, 2 Dig. Ops. 164, as quoted in 16 C.M.A. 324, 330, 36 C.M.R. 480, 486.

in *Schuering* emphasizes that every step in the exercise of jurisdiction under Article 2(3) must be taken during a period of IDT when the accused is properly subject to jurisdiction thereunder and that this is so even though there are intervening periods of time when the accused is not on IDT.

The next significant case, *Wallace v. Chafee*,<sup>92</sup> involved a petition for writ of habeas corpus filed by a Marine reservist who was tried, convicted and sentenced (including confinement at hard labor for twenty-one days) by a summary court-martial for refusing to obey the order of a superior commissioned officer to get a haircut. Although the offense occurred during a drill involving classroom training only, the petitioner was a member of a Marine Corps Reserve tank battalion. In the habeas corpus proceeding, the petitioner claimed, among other things, that he had not "voluntarily accepted" the orders subjecting him to UCMJ jurisdiction under Article 2(3) and, therefore, that the summary court-martial which had convicted him lacked jurisdiction over both him and the offense. In sustaining jurisdiction, the court noted that as a precondition to enlistment, the petitioner had been required to accept orders subjecting himself to the UCMJ during periods of IDT and that his entering the Marine Corps Reserve (as an obligated reservist in lieu of being subject to the draft) was a purely voluntary act. The court viewed reservists who accept orders subjecting themselves to UCMJ jurisdiction as a condition to their enlistments as being prohibited from unilaterally withdrawing acceptance subsequent to enlistment. Despite the legislative history, it found "no indication that Congress contemplated that reservists would manifest their voluntary choice by deciding whether, with respect to a particular drill, to revoke prior acceptance of the UCMJ."<sup>93</sup> The court gave "short shift" to the argument that Article 2(3) is limited only to situations when a reservist is using dangerous

or expensive equipment, refusing to consider the legislative history on this point since the Article itself contains no such limiting language. It noted that as a tank crewman, the petitioner could not seriously contend that he is subject to the UCMJ only when operating a tank. Other arguments, including a constitutional challenge based upon the court's failure to construe Article 2(3) as narrowly as possible, were rejected.

The fourth and most recent case to address the issue of UCMJ jurisdiction over reservists on IDT was *United States v. Abernathy*.<sup>94</sup> The accused was a Coast Guard reservist three and one-half years into a six-year enlistment when he was tried by special court-martial for being drunk on board a Coast Guard vessel and for willfully damaging military property while on IDT. The issue before the Coast Guard Court of Military Review was whether, as required by Article 2(3), the accused had voluntarily accepted orders subjecting himself to the UCMJ during periods of IDT. Orders mailed to the accused bearing an endorsement for his signed acceptance provided that "[u]pon voluntary acceptance of these orders, you are subject to the Uniform Code of Military Justice while performing inactive duty in compliance herewith." The accused testified under oath that he had never received these orders, and while the government established that as a part of his enlistment contract he had promised to accept them, it was unable to produce a copy of the orders signed by the accused and relied upon the inference of acceptance stemming from the accused's attendance at IDT for more than three years. In setting aside the conviction for lack of jurisdiction under Article 2(3), the court held that the accused's promise to accept found in his enlistment contract did not constitute an acceptance. Moreover, it refused to infer acceptance from the accused's performance of IDT for more than three years since a factual acceptance (as distinguished from a fictional or con-

<sup>92</sup>451 F.2d 1374 (9th Cir. 1971).

<sup>93</sup>*Id.* at 1377.

<sup>94</sup>*Id.* at 1377.

structive acceptance) is required by Article 2(3).<sup>95</sup>

Based upon the relevant legislative history, it seems clear that Congress enacted the Article 2(3) grant of jurisdiction over reservists performing IDT in all services as a compromise between the former blanket coverage by the Navy and the complete lack of coverage by the Army. The services, however, have not been uniform in their implementation of Article 2(3) despite the desire of the Congress for uniformity. In fact, the Navy seems to have done much the same under the UCMJ as it did under prior law. Nevertheless, the Army seems justified in its "hands off" approach since the issuance of orders of the type contemplated by Article 2(3) is in any event discretionary. If nothing else, the Army has avoided getting embroiled in the jurisdictional questions which have confronted the other services in exercising jurisdiction under Article 2(3).

#### B. Alternatives to UCMJ Jurisdiction at IDT.

In view of the absence of any UCMJ jurisdiction over Army enlisted reservists performing IDT, a USAR commander must consider what other methods and measures are available to

preserve discipline within his or her command. At with disciplinary problems during AT or ADT, the solutions in an IDT setting will depend largely upon the nature of the misconduct or disciplinary infraction involved.

If the misconduct constitutes a criminal offense under state law, the appropriate solution normally is to turn the matter over to the local civilian law enforcement authorities. Although such a solution may be frustrated if the offense takes place at a location subject to exclusive federal legislative jurisdiction, many USAR training facilities are at locations which are subject to local jurisdiction.

Most misconduct in an IDT setting will be in the nature of purely military offenses. In such circumstance, the nonpunitive disciplinary measures of admonition and reprimand,<sup>96</sup> administrative reduction,<sup>97</sup> corrective training<sup>98</sup> and counseling<sup>99</sup> are fully available to the USAR commander. In appropriate cases, these methods can be utilized with great effect. For example, just as an administrative reduction for misconduct is frequently more effective than a reduction imposed as nonjudicial punishment in an AT setting, an administrative reduction for misconduct (and the loss of pay which necessarily results) is apt to be the most effective means of dealing with serious breaches of discipline in an IDT setting. Depending upon the nature of a reservist's behavior or misconduct and a variety of other factors, additional administrative alternatives include separation under the Pre-IADT Discharge Program or under the Expeditious Discharge Program, separation for unsuitability or misconduct, separation or transfer to the Individual Ready Reserve (IRR) for unsatisfactory participation evidenced by unexcused absences, and bar to reenlistment.

<sup>95</sup>The *Abernathy* case, *supra* note 94, is similar in its procedural posture to *Mangsen v. Snyder*, 24 U.S.C.M.A. 107, 51 C.M.R. 280, 1 M.J. 287 (1976), involving a Navy reservist. In both cases, the military judge granted defense motions to dismiss for lack of jurisdiction. In *Abernathy*, the convening authority overruled the military judge and returned the case for trial as was permitted prior to *United States v. Ware*, 24 U.S.C.M.A. 102, 51 C.M.R. 275, 1 M.J. 282 (1976). In *Mangsen*, however, the convening authority returned the case for reconsideration by the military judge who then reversed himself. The Court of Military Appeals granted a petition for extraordinary relief and reversed the judge's second ruling (thus reinstating the earlier dismissal) on the ground, consistent with the holding in *Ware*, that absent any additional evidence or legal argument, the first ruling based upon the judge's independent legal judgment was correct. Unfortunately, except for stating them in a footnote, the court did not discuss the jurisdictional issues under Article 2(3) which had been raised by the defense motion.

<sup>96</sup>See notes 12-17 *supra* and accompanying text.

<sup>97</sup>See notes 20-27 *supra* and accompanying text.

<sup>98</sup>See note 28 *supra* and accompanying text.

<sup>99</sup>See note 29 *supra* and accompanying text.

The term "separation" as used in the context of AR 135-178, the Army regulation governing the separation and discharge of enlisted reservists, at first appears to be misleading, for in addition to discharge, it also means transfer from a troop program unit to the IRR.<sup>100</sup> Thus, although separated, a reservist is not necessarily discharged from the USAR. Other definitional concepts which are essential to an understanding of the separation of enlisted reservists for reasons other than the expiration of their enlistments include (1) statutorily obligated member and (2) contractually obligated member. In general, a "statutorily obligated member" is a reservist who is currently serving under a six-year statutory service obligation upon initial entry into the armed forces (*i.e.*, a nonprior service reservist).<sup>101</sup> Although serving initial enlistments in the armed forces, (1) male reservists whose entry was prior to 10 November 1979 and who were age 26 or older upon entry, (2) female reservists whose entry was after 31 January 1978 and prior to 10 November 1979 and who were age 26 or older upon entry, (3) female reservists regardless of age upon entry whose entry was prior to 1 February 1978, and (4) male and female reservists who were age 26 or older upon execution of their service agreements and whose service agreements were executed after 9 November 1979 and before 10 December 1979 and reflect no statutory service obligation are *not* treated as statutorily obligated members.<sup>102</sup> A "contractually obligated member," on the other hand, is virtually any other reservist, generally, a reservist

"who has completed his [or her] statutory service obligation and/or is serving under an . . . enlistment contract . . ."<sup>103</sup> In order to preclude the loss of potential mobilization assets, it is Army policy to transfer most statutorily obligated members approved for separation to the IRR pending the completion of their statutory service obligations; only those who have no mobilization potential are discharged.<sup>104</sup>

*Pre-IADT Discharge Program.* When a newly recruited reservist is placed on active duty to receive basic combat training and advanced individual training or the equivalent, the reservist is performing initial active duty training (IADT).<sup>105</sup> Prior to performing IADT, a reservist will normally be assigned to a particular USAR unit for several months, and the commander of that unit may determine that the reservist is unsuitable for further service. The Pre-IADT Discharge Program is a means whereby commanders can effect the separation of such reservists.<sup>106</sup>

Qualities which can lead to discharge under this program include a reservist's inability to accept instructions or directions, a history of drug or alcohol abuse not detected at the time of enlistment, social or emotional maladjustment patterns, inability to cooperate and, in the case of female reservists, pregnancy existing at the time of enlistment.<sup>107</sup> Although a reservist identified for separation under this program may seek retention through the submission of statements in rebuttal of the grounds stated in the commander's letter of notification,<sup>108</sup> a reservist discharged under the program is furnished an honorable discharge

<sup>100</sup> AR 135-178, para. 1-3k (C3, 15 August 1980).

<sup>101</sup> *Id.* para. 1-3p; AR 135-91, Army National Guard and Army Reserve—Service Obligations, Methods of Fulfillment, Participation Requirements, and Enforcement Procedures, para. 2-1 (C5, 15 May 1980).

<sup>102</sup> See AR 135-91, para. 2-1a(1)-(3), b (C5, 15 May 1980). Although para. 2-1a(2) relating to female reservists age 26 or older entering after 31 January 1978 refers to the period "1 February 1978 through 9 November" without specifying the year in which the date "9 November" fell, the year 1979 is consistent with both para. 2-1a(1) and the exception in para. 2-1b when para. 2-1 is read in its entirety.

<sup>103</sup> AR 135-178, para. 1-3o (C3, 5 August 1980). See also AR 135-91, paras. 2-2, 2-3 (C5, 15 May 1980).

<sup>104</sup> AR 135-178, para. 1-25 (C3, 15 August 1980).

<sup>105</sup> See 10 U.S.C. § 511(d) (1976); AR 310-25, at 140 (15 September 1975); AR 310-50, at 39 (3 November 1975); AR 135-200, ch. 2, sec. I (C5, 15 December 1979).

<sup>106</sup> AR 135-178, para. 4-19 (C3, 15 August 1980).

<sup>107</sup> *Id.* para. 4-20a (C2, 15 October 1979).

<sup>108</sup> *Id.* para. 4-20d(2).

certificate.<sup>109</sup> Since an untrained or untrainable reservist has no potential in the event of mobilization, reservists separated under this program are not subject to transfer to the IRR.<sup>110</sup>

*Expeditious Discharge Program.* Sometimes, defective patterns of behavior do not manifest themselves before IADT or until many months after enlistment, or a unit commander may decide to give a reservist the benefit of the doubt and not to effect separation under the Pre-IADT Discharge Program. Although not intended as a substitute for good leadership, the Expeditious Discharge Program provides unit commanders with a means for separating a nonprior service reservist who has completed between six and thirty-six months of continuous unit service in his or her first enlistment when the reservist evidences a poor attitude, a lack of motivation, a lack of self-discipline or an inability to adapt socially or emotionally.<sup>111</sup> The service of a reservist separated under the Expeditious Discharge Program is characterized as "honorable" unless the reservist is given the opportunity to consult with an appointed counsel for consultation in which case the reservist's service may be characterized as "under honorable conditions."<sup>112</sup>

Before a reservist may be separated under the Expeditious Discharge Program, he or she must be counseled by one or more responsible persons as to the reason for the counseling, the fact that continued behavior of the sort leading to counseling can lead to separation under the Expeditious Discharge Program, and the consequences of such a separation.<sup>113</sup> A memorandum for record must be made of each coun-

seling session.<sup>114</sup> In addition, unit commanders will usually be required to have a reservist re-assigned to another unit for the purpose of rehabilitation.<sup>115</sup> Although counseling may not be waived, rehabilitation may be waived by the separation authority (usually the commander of the major USAR command to which a reservist is assigned) "when it is determined that further duty will, in his/her best judgment, create serious disciplinary problems . . . ."<sup>116</sup>

If a reservist objects to separation under the Expeditious Discharge Program, the case will be closed, and other appropriate action may be taken.<sup>117</sup> If, however, the separation authority approves a reservist's consent to separation under the program, the reservist will be discharged if considered to have no potential as a mobilization asset or transferred to the IRR.<sup>118</sup>

*Separation for Unsuitability.* Although the Pre-IADT Discharge Program and the Expeditious Discharge Program are designed to facilitate the separation of reservists in appropriate cases before formal board action becomes necessary, they are not a substitute for such action. Thus, for example, if a reservist refuses separation under the Expeditious Discharge Program, he or she may nevertheless be subject to separation for unsuitability. It is Army policy to separate for unsuitability those enlisted reservists (who otherwise meet retention medical standards) "when it is clearly established that . . . [i]t is unlikely that the member will develop sufficiently to participate in further military training and/or become a satisfactory soldier."<sup>119</sup> Conditions which render an enlisted reservist unsuitable include inapti-

<sup>109</sup>*Id.* para. 4-22.

<sup>110</sup>*See* AR 135-178, para. 1-25 (C3, 15 August 1980).

<sup>111</sup>*Id.* paras. 4-23 to 4-25.

<sup>112</sup>*Id.* para. 4-29b, c. Appointed counsel for consultation is normally a judge advocate who may be appointed by a major USAR command. *See* AR 135-178, para. 1-3b (IC 101, 27 November 1980).

<sup>113</sup>*Id.* para. 4-28a (C3, 15 August 1980).

<sup>114</sup>*Id.*

<sup>115</sup>*Id.* para. 4-28b.

<sup>116</sup>*Id.* para. 4-28c. For designation of the separation authority under the Expeditious Discharge Program, *see* AR 135-178 para. 1-6a (C2, 15 October 1979).

<sup>117</sup>*Id.* para. 4-30d (C3, 15 August 1980).

<sup>118</sup>*See* AR 135-178, paras. 1-25, 4-31 (C3, 15 August 1980).

<sup>119</sup>*Id.* para. 6-2.

tude, personality disorders, apathy, defective attitudes, inability to expand effort constructively, homosexual tendencies or interest, and financial irresponsibility.<sup>120</sup> The service of a reservist separated for unsuitability is characterized as "honorable" or "under honorable conditions."<sup>121</sup>

Before the commencement of action to separate a reservist for unsuitability, counseling and rehabilitation measures similar to those under the Expeditious Discharge Program must be taken.<sup>122</sup> However, both counseling and rehabilitation may be waived by USAR commands which are normally commanded by general officers or colonels having judge advocates on their staffs when it is believed that the reservist's further duty will create severe disciplinary problems.<sup>123</sup> In addition, counseling and rehabilitation may be waived by the convening authority (usually the area commander) when unsuitability is due to personality disorders or homosexual tendencies.<sup>124</sup> A unit commander who decides to recommend the separation of a reservist for unsuitability must initially refer the reservist for a medical evaluation.<sup>125</sup> This is extremely important (1) because reservists who do not meet retention medical standards are processed through medical channels<sup>126</sup> and may not be separated for unsuitability<sup>127</sup> and (2) because personality disorders

serving as a basis for separation for unsuitability must be diagnosed by medical authorities.<sup>128</sup>

Separation for unsuitability does require the appointment of an appointed counsel for consultation and, unless waived by the reservist, the appointment of an appointed counsel for representation and formal action by a board of officers.<sup>129</sup> Reservists separated for unsuitability due to apathy are considered for transfer to the IRR; however, others separated for unsuitability are discharged.<sup>130</sup>

*Separation for Misconduct (Disqualifying Patterns or Acts of Conduct).* A reservist may be considered for separation for misconduct because of "other disqualifying patterns or acts of conduct" (i.e., other than fraudulent entry, conviction by civil court or unsatisfactory participation of statutorily obligated members, each of which is an independent ground for separation for misconduct).<sup>131</sup> "Other disqualifying patterns or acts of conduct" includes frequent incidents of a discreditable nature with civil or military authorities, an established pattern of shirking, an established pattern showing dishonorable failure to support dependents or to comply with court-ordered support, sexual perversion, drug offenses, and homosexual acts.<sup>132</sup>

Disqualifying patterns or acts of conduct must be well documented to serve as a basis for

<sup>120</sup>*Id.* para. 6-5.

<sup>121</sup>*Id.* para. 6-3.

<sup>122</sup>*Id.* para. 6-6a, b. See notes 133-15 *supra* and accompanying text.

<sup>123</sup>AR 135-178, para. 6-6c(2) (C3, 15 August 1980).

<sup>124</sup>*Id.* para. 6-6c(1). For designation of the convening authority in separation proceedings for unsuitability, see AR 135-178, paras. 1-3d (C3, 15 August 1980), 1-6, (C2, 15 October 1979), 8-1b (C3, 15 August 1980).

<sup>125</sup>*Id.* para. 6-7 (C3, 15 August 1980).

<sup>126</sup>See AR 135-178, para. 4-10c (C3, 15 August 1980), referring to AR 635-40, Personnel—Separations—Physical Evaluation for Retention, Retirement, or Separation (15 March 1980), ch. 8.

<sup>127</sup>AR 135-178, para. 6-2b (C3, 15 August 1980).

<sup>128</sup>*Id.* para. 6-5b.

<sup>129</sup>*Id.* paras. 6-8a (C2, 15 October 1979), 8-2b (IC IO1, 27 November 1980) A reservist's failure to reply to the letter of notification of the basis for a recommended separation within 45 days of receipt constitutes a waiver of various rights including the right to a hearing before a board of officers. See AR 135-178, para. 8-2b(5), Figure 8-1 (para. 5 thereof) (IC IO1, 27 November 1980).

<sup>130</sup>See AR 135-178, paras. 1-25, 6-5c (C3, 15 August 1980).

<sup>131</sup>*Id.* para. 7-1, ch. 7, sec. VI (IC IO1, 27 November 1980).

<sup>132</sup>*Id.* para. 7-30 (C1, 1 February 1979).

separation. The service of a reservist separated for this form of misconduct is normally characterized as having been "under other than honorable conditions."<sup>133</sup> As with separations for unsuitability and under the Expeditious Discharge Program, counseling and rehabilitation measures must be taken.<sup>134</sup> However, because of the serious consequences of separation for misconduct, only the convening authority (usually the area commander) may waive the counseling and rehabilitation requirements.<sup>135</sup>

Separation for misconduct because of other disqualifying acts does require the appointment of an appointed counsel for consultation and, unless waived by the reservist, the appointment of an appointed counsel for representation and formal action by a board of officers.<sup>136</sup> Reservists separated for this form of misconduct are not considered for transfer to the IRR and are, therefore, subject to discharge.<sup>137</sup> In fact, approval of a recommendation that a reservist be separated under other than honorable conditions because of other disqualifying acts will result in the reservist being both reduced to pay grade E1<sup>138</sup> and discharged.<sup>139</sup>

*Separation or Transfer to the IRR for Unsatisfactory Participation.* Misconduct in an

IDT setting frequently manifests itself in the form of unexcused absences from scheduled drills. In general, an unexcused absence is any absence that is not excused.<sup>140</sup> Absences due to sickness, injury, or some other circumstance beyond the reservist's control may be treated as excused absences if the excuse is adequately documented by the reservist and then approved by the reservist's unit commander.<sup>141</sup> As an exception to unexcused absences, equivalent training may sometimes be authorized in place of a drill missed by a reservist for a justifiable reason which is beyond the unit commander's authority to excuse.<sup>142</sup> In the case of a statutorily obligated member, absences during a 90-day leave or absence to find a new unit upon change of residence are treated as excused absences.<sup>143</sup>

Unit commanders are required to follow prescribed administrative procedures when reservists fail to participate satisfactorily.<sup>144</sup> In an IDT setting, satisfactory participation generally means attending all scheduled training assemblies.<sup>145</sup> A reservist who accumulates nine or more unexcused absences within a 12-month period must be charged with unsatisfactory participation.<sup>146</sup> The appropriate proce-

<sup>133</sup>*Id.* para. 7-3 (C3, 15 August 1980).

<sup>134</sup>*Id.* para. 7-31a, b (C1, 1 February 1979). See notes 113-15 *supra* and accompanying text.

<sup>135</sup>AR 135-178, para. 7-31c (C1, 1 February 1979). For designation of the convening authority in separation proceedings for misconduct. see AR 135-178, paras. 1-3d (C3, 15 August 1980), 1-6 (C2, 15 October 1979), 8-1b (C3, 15 August 1980).

<sup>136</sup>See AR 135-178, paras. 7-6, 7-7a, (C3, 15 August 1980), 8-2b (IC IO1, 27 November 1980). A reservist's failure to reply to the letter of notification of the basis for a recommended separation within 45 days of receipt constitutes a waiver of various rights including the right to a hearing before a board of officers. See AR 135-17 8, para. 8-2b(5), Figure 8-1 (para. 5 thereof) (IC IO1, 27 November 1980).

<sup>137</sup>See AR 135-178, para. 1-25 (C3, 15 August 1980).

<sup>138</sup>*Id.* paras. 7-40, 8-10a; AR 140-158, para. 3-38c (C7, 1 July 1980).

<sup>139</sup>AR 135-178, para. 7-38a(1) (C1, 1 February 1979).

<sup>140</sup>See AR 135-91, para. 4-9a (C5, 15 May 1980).

<sup>141</sup>*Id.* paras. 4-2a, 4-5.

<sup>142</sup>*Id.* para. 4-10. General officer commanders of USAR units are authorized to grant exceptions to unexcused absences. *Id.* paras. 4-2b, 4-c.

<sup>143</sup>*Id.* ch. 4, sec. IV.

<sup>144</sup>See AR 135-91, para. 4-9c, d(C5, 15 May 1980).

<sup>145</sup>*Id.* para. 3-1a.

<sup>146</sup>*Id.* paras. 4-9b(1), 4-11a, Figure 4-1 (para. 7 thereof). [The reference to "five or more unexcused absences" in AR 135-91, para. 4-9b(1), is apparently a printing oversight.] See AR 135-91, para. 4-11b (C5, 15 May 1980), for rules applicable to the charging of unexcused absences. For example, one unexcused absence may be charged for each 4-hour segment of IDT missed without authority by a reservist, but no more than four unexcused absences may be charged when a period of IDT missed without authority by a reservist on consecutive days exceeds 16 hours as in the case of a MUTA 5 or a MUTA 6.

ture to be followed by a unit commander then depends upon whether the unsatisfactory participant is a statutorily obligated member or a contractually obligated member and, if the unsatisfactory participant is a statutorily obligated member and, if the unsatisfactory participant is a statutorily obligated member, whether he or she has completed more or less than twenty-four months of active duty service (including ADT).<sup>147</sup>

A reservist charged with unsatisfactory participation who is a statutorily obligated member and who has completed less than twenty-four months of active duty service must be processed for separation under AR 135-178.<sup>148</sup> A reservist charged with unsatisfactory participation who is a statutorily obligated member and who has completed twenty-four or more months of active duty service may elect transfer to the IRR in lieu of being processed for

separation under AR 135-178.<sup>149</sup> Finally, a reservist charged with unsatisfactory participation who is a contractually obligated member is not processed for separation under AR 135-178, but may, in the commander's discretion, be either retained in his or her unit of assignment or transferred to the IRR.<sup>150</sup> A reservist being processed for separation because of unsatisfactory participation must be advised that he or she is neither authorized nor required to attend drills while awaiting the completion of separation proceedings, and the reservist's absences during such period are treated as excused absences.<sup>151</sup>

The service of a reservist processed for separation under AR 135-178 because of unsatisfactory participation is normally characterized as having been "under other than honorable conditions."<sup>152</sup> Unlike most other forms of separation discussed above, however, there are no counseling and rehabilitation requirements other than the written notifications of absence and the procedures which a unit commander must

<sup>147</sup>See AR 135-91, para. 4-9c, d(C5, 15 May 1980).

<sup>148</sup>*Id.* para. 4-9c(1); AR 135-178, paras. 7-44, (C3, 15 August 1980), 7-46a (IC IO1, 27 November 1980). In rescinding AR 135-91, paras. 6-1 to 6-19, Change 5 provides that "[s]tatutorily obligated enlisted members who have not completed 24 or more months of AD/ADT who are declared to be unsatisfactory participants for any of the reasons given in chapter 4 [AR 135-91] will be considered by a board of officers convened under the provisions of section VII, chapter 7, AR 135-178 . . . ." Satisfactory participation is also defined to include "[a]ttending and satisfactorily completing the entire period of annual training (AT), unless excused by proper authority." AR 135-91, paras. 3-1b, 4-13a(C5, 15 May 1980). Thus, a statutorily obligated member with less than 24 months of active duty service who is at any time AWOL from AT must also be considered for separation on the grounds of unsatisfactory participation. Such separation, therefore, constitutes yet another nonpunitive disciplinary measure available to a unit commander in connection with AT. Although AR 135-178, para. 7-44, provides that the provisions of ch. 7, sec. VII, of the regulation "apply also to all nonprior service . . . USAR enlisted members who have not served 24 months active duty," nonprior service reservists with less than 24 months of active duty service who are not statutorily obligated members are treated as contractually obligated members under AR 135-91 for purposes of the procedures applicable in the event of unsatisfactory participation. See note 150 *infra* and accompanying text.

<sup>149</sup>AR 135-91, para. 4-9c(2) (C5, 15 May 1980). For authority for the direct transfer to the IRR of statutorily obligated members charged with unsatisfactory participation who have completed 24 or more months of active duty service, see AR 135-91, para. 6-24 (C5, 15 May 1980); AR 140-10, Army Reserve—Assignments, Attachments, Details, and Transfers, para. 2-23b (C3, 1 October 1980). Assignment in the IRR is to the USAR Control Group (Reinforcement). *Id.* para. 2-10a(6). A statutorily obligated member who has completed 24 or more months of active duty service and who is charged with unsatisfactory participation for failing to attend or to satisfactorily complete AT must be processed for separation under AR 135-178 unless he or she elects transfer to the IRR. See note 148 *supra*.

<sup>150</sup>AR 135-91, paras. 4-9d, 6-22 (C5, 15 May 1980). For authority for the direct transfer to the IRR of contractually obligated members charged with unsatisfactory participation, see AR 135-91, para. 6-22 (C5, 15 May 1980); AR 140-10, para. 2-23c (C3, 1 October 1980). Assignment in the IRR is to the USAR Control Group (Reinforcement). *Id.* para. 2-10a(6).

<sup>151</sup>AR 135-91, para 4-12b(3) (C5, 15 May 1980).

<sup>152</sup>AR 135-178, para. 1-27a (C3, 15 August 1980).

follow in documenting them.<sup>153</sup> The service of other reservists charged with unsatisfactory participation who are transferred to the IRR without being processed for separation under AR 135-178 (*i.e.*, contractually obligated members and electing statutorily obligated members who have completed twenty-four or more months of active duty service) is not characterized at the time of transfer.<sup>154</sup> Nevertheless, a statutorily obligated member charged with unsatisfactory participation who has completed twenty-four or more months of active duty service and who elects transfer to the IRR without being processed for separation under AR 135-178 is administratively reduced one pay grade at the time of transfer.<sup>155</sup> There is no similar provision for the administrative reduction of a contractually obligated member

transferred to the IRR for unsatisfactory participation.<sup>156</sup>

Separation under AR 135-178 because of unsatisfactory participation does require the appointment of appointed counsel for consultation and, unless waived by the reservist, the appointment of appointed counsel for representation and formal action by a board of officers.<sup>157</sup> All statutorily obligated members who are separated under AR 135-178 because of unsatisfactory participation are transferred to the IRR.<sup>158</sup> A statutorily obligated member

<sup>153</sup> See AR 135-91, para. 4-12z, b (C5, 15 May 1980). The procedures for documenting an actual absence are in addition to orientation procedures intended to assure that statutorily and contractually obligated members are aware of their service obligations and the requirements for satisfactory participation. See AR 135-91, para. 4-4b, c (C5, 15 May 1980).

<sup>154</sup> AR 140-10, para. 2-23b, c (C3, 1 October 1980). Characterization of the service of a reservist transferred directly to the IRR for unsatisfactory participation is determined upon completion of the reservist's service obligation and is governed by the general provisions relating to the characterization of service upon discharge. See AR 135-178, paras. 1-8 to 1-10 (C2, 15 October 1979). Although a reservist transferred directly to the IRR for unsatisfactory participation incurs a "separation" for purposes of AR 135-91 (*see* para. 1-3e (C5, 15 May 1980)), there is no separation proceeding under AR 135-178 wherein the reservist could have his or her case considered by a board of officers, and absent an approved recommendation by a board of officers, the issuance of a discharge certificate under other than honorable conditions is not authorized. See AR 135-178, para. 1-11a (C2, 15 October 1979). Thus, upon completion of his or her service obligation, a reservist transferred directly to the IRR for unsatisfactory participation will be discharged under honorable conditions and issued an honorable discharge certificate or a general discharge certificate, as appropriate. *Id.* para. 1-10b.

<sup>155</sup> AR 135-91, para. 4-9c(2) (C5, 15 May 1980); AR 140-158, para. 3-38d(2) (C7, 1 July 1980).

<sup>156</sup> Compare AR 135-91, para. 4-9d (C5, 15 May 1980) with AR 135-91, para. 4-9c (C5, 15 May 1980).

<sup>157</sup> See AR 135-178, paras. 7-46a, 8-2b (IC IO1, 27 November 1980). For designation of the convening authority in separation proceedings under AR 135-178 for unsatisfactory participation, *see* AR 135-178, paras. 1-3d (C3, 15 August 1980), 1-6 (C2, 15 October 1979), 8-1b (C3, 15 August 1980). A reservist's failure to reply to the letter of notification of the basis for a recommended separation within 45 days of receipt constitutes a waiver of various rights including the right to a hearing before a board of officers. See AR 135-178, para. 8-2b(5), Figure 8-1 (para 5 thereof) (IC IO1, 27 November 1980). In the case of separations for unsatisfactory participation, if the letter of notification is sent by certified mail to the most recent address furnished by the reservist (*i.e.*, in cases where delivery through personal contact cannot reasonably be made) and if no better address can be determined, a return of the letter of notification as unclaimed or undeliverable also constitutes a waiver of the right to a hearing before a board of officers. *Id.* para. 7-46a(3). The attempt to determine a better address than the most recent address furnished by the reservist should be documented in the reservist's MPRJ by a suitable affidavit or other sworn statement.

<sup>158</sup> *Id.* paras. 1-25, 7-44, 7-45 (C3, 15 August 1980). Since all reservists separated for unsatisfactory participation under AR 135-178 are transferred to the IRR, they are all apparently regarded as having some potential in the event of mobilization, even if they have never completed basic training or its equivalent. For authority for the transfer to the IRR of statutorily obligated members separated under AR 135-178 for unsatisfactory participation who have completed less than 24 months of active duty service, *see* AR 135-178 para. 7-45; AR 140-10, para. 2-23a (C3, 1 October 1980). Assignment of such members in the  
(Continued on p. 27)

who has completed less than twenty-four months of active duty service and who is transferred to the IRR upon separation under AR 135-178 for unsatisfactory participation is administratively reduced to pay grade E1 if serving in pay grade E2 prior to separation or to pay grade E2 if serving in pay grades E3 or higher prior to separation.<sup>159</sup> A reservist who is transferred to the IRR upon separation under AR 135-178 for unsatisfactory participation and whose service is characterized as being "under other than honorable conditions" may obtain an upgrading of the characterization of his or her service either by rejoining a USAR unit and participating satisfactorily for a minimum period of twelve months or by volunteering for and satisfactorily serving an ADT tour of at least forty-five days.<sup>160</sup>

The procedures for separating certain statutorily obligated members under AR

135-178 for unsatisfactory participation seem cumbersome. Nevertheless, this basis for separation and a unit commander's ability in general to effect separation by compelling the transfer of other unsatisfactory participants to the IRR are particularly useful disciplinary tools since under a variety of circumstances a reservist may be charged with an unexcused absence when in fact present for drill. Specifically, the regulations provide that:

Members present at a scheduled unit training assembly will not receive credit for attendance unless they are wearing the prescribed uniform; present a neat and soldierly appearance; and perform their assigned duties in a satisfactory manner as determined by the unit commander. Members who do not receive credit for attending a unit training assembly will be charged with an unexcused absence. . . .<sup>161</sup>

Under this provision, a commander's decision to award an unexcused absence to a reservist who appeared for IDT without wearing the prescribed uniform (*i.e.*, no belt) has been judicially upheld.<sup>162</sup> Thus, although present for IDT, a reservist who (1) is out of uniform, (2) fails to present a soldierly appearance or (3) does not perform assigned duties in a satisfactory manner as determined by his or her unit commander may be charged with an unexcused absence. In order for such a deficiency to count as an unexcused absence in separation proceedings, it must be documented and communicated to the reservist just as in the case of nonat-

(Footnote, continued)

IRR is to the USAR Control Group (Annual Training). *Id.* para. 2-9a(7). Statutorily obligated members charged with unsatisfactory participation who have completed 24 or more months of active duty service and who are separated under AR 135-178 because they do not elect direct transfer to the IRR under AR 135-91, paras. 4-9c(2), 6-24 (C5, 15 May 1980), are assigned in the IRR to the USAR Control Group (Reinforcement). AR 140-10, para. 2-10a(6) (C3, 1 October 1980).

<sup>159</sup> AR 135-178, para. 8-10b (C3, 15 August 1980); AR 140-158, para. 3-38d(1) (C7, 1 July 1980). Although AR 135-178, para. 8-10b, provides that a reservist transferred to the IRR following separation for unsatisfactory participation is to be reduced to pay grade E1 or E2 ("as appropriate"), AR 140-158, para. 3-38d(1), which directs the appropriate reduction depending upon the reservist's pay grade prior to separation only applies to statutorily obligated members who have completed less than 24 months of active duty service. Thus, it appears that a statutorily obligated member charged with unsatisfactory participation who has completed 24 or more months of active duty service and who does not elect direct transfer to the IRR under AR 135-91, paras. 4-9c(2), 6-24 (C5, 15 May 1980), may avoid an administrative reduction in pay grade when transferred to the IRR following separation for unsatisfactory participation under AR 135-178.

<sup>160</sup> AR 135-178, para. 7-51 (C3, 15 August 1980).

<sup>161</sup> AR 135-91, para. 3-1a (C5, 15 May 1980). *See also* AR 140-1, para. 3-9f (1 November 1979).

<sup>162</sup> *Byrne v. Resor*, 412 F.2d 774 (3d Cir. 1969), involving an appeal from the denial of a petition for writ of habeas corpus filed by an enlisted Army reservist ordered to active duty for unsatisfactory participation. Prior to the change to AR 135-178 requiring separation for unsatisfactory participation, enlisted reservists with five or more unexcused absences within a 12-month period were subject to order to active duty. *See* AR 135-91, paras. 6-1, 6-2, 6-11, (C3, 1 December 1979) (paragraphs rescinded).

tendance.<sup>163</sup> Without proper documentation, it may not be possible to convince a board of officers that a reservist has in fact accumulated the required number of unexcused absences.

It should be noted that for a nonprior service reservists who has completed between six and thirty-six months of continuous unit service in his or her first enlistment, unsatisfactory participation involving no more than eight unexcused absences from IDT within a 12-month period is a condition upon which the reservist's unit commander may recommend separation under the Expeditious Discharge Program.<sup>164</sup> Once such a member has accumulated nine unexcused absences within a 12-month period, however, the Expeditious Discharge Program is not available, and the reservist is subject to the administrative procedures under AR 135-91 normally applicable to reservists charged with unsatisfactory participation.<sup>165</sup>

*Bar to Reenlistment.* The bar to reenlistment procedures is a means of denying the privilege of reenlistment to certain categories of reservists. It is Army policy that:

[O]nly personnel of high moral character, professional competence, and demonstrated adaptability to the requirements of the professional soldier's moral code will be extended the privilege of reenlisting in the USAR. Persons who cannot, or who do not, measure up to and maintain such standards, but whose separation under appropriate procedures is not warranted, will be barred from further service. . . .<sup>166</sup>

A commander may initiate a bar to reenlistment in the case of a reservist against whom separation action was taken which did not result in separation (*e.g.*, in the case of a reservist considered for separation for unsuitability who was retained).<sup>167</sup> Reservists who are untrainable (*i.e.*, require frequent or continual supervision) or unsuitable (*i.e.*, possess habits detrimental to discipline) or who are generally irresponsible towards their military service may be considered for a bar to reenlistment.<sup>168</sup>

In preparing a bar to reenlistment (DA Form 4126-R), a unit commander must specify in some detail the basis for his or her action and recommendation, and the reservist must be given at least thirty days in which to comment.<sup>169</sup> Commanders of major USAR commands may approve a bar to reenlistment in the case of a reservist having less than ten years of service upon completion of the reservist's current enlistment,<sup>170</sup> but it takes the action of an area commander to approve a bar to reenlistment in the case of a reservist having ten to eighteen years of service upon completion of the reservist's current enlistment.<sup>171</sup> Area commanders may also approve a bar to reenlistment in the case of a reservist with more than eighteen years of service upon completion of the reservist's current enlistment if the current enlistment is extended to the required twenty years of qualifying service for retirement purposes.<sup>172</sup> Once a bar to reenlistment is approved with respect to a particular reservist, it must be reviewed by the unit commander at six-month intervals and prior to completion of the reservist's current term of service.<sup>173</sup> It is within the unit commander's

<sup>163</sup> AR 135-91, para. 4-12a (C5, 15 May 1980). See AR 135-91, Figure 4-1 (para. 1b thereof) (C5, 15 May 1980), which specifies "[i]mproper military appearance" and "[u]nsatisfactory performance of assigned duties" as grounds for the charging of an unexcused absence.

<sup>164</sup> AR 135-178, paras. 4-23e, 4-26a(2) (C3, 15 August 1980).

<sup>165</sup> *Id.* para. 4-26a(2).

<sup>166</sup> AR 140-111, Army Reserve—Enlistment and Reenlistment, para. 3-26 (C1, 21 November 1977).

<sup>167</sup> *Id.* para. 3-27c.

<sup>168</sup> *Id.* para. 3-28.

<sup>169</sup> *Id.* para. 3-29b.

<sup>170</sup> *Id.* para. 3-29d(1).

<sup>171</sup> *Id.* para. 3-29d(2).

<sup>172</sup> *Id.*

<sup>173</sup> *Id.* para. 3-29f(2).

power to recommend the removal of an approved bar to reenlistment if the reservist's improved performance should so warrant, but removal of a bar requires approval at the same level as was required for initial approval of the bar.<sup>174</sup>

#### IV. Conclusion.

From the survey and brief analysis of the options available to commanders in the disposition of offenses and disciplinary infractions committed by reservists during AT or ADT, several broad guidelines emerge. Every effort should be made to dispose of such matters during AT or ADT through administrative or nonjudicial means. In addition, nonpunitive disciplinary measures (*i.e.*, administrative means) are preferable to nonjudicial punishment in light of (1) the reservist's right to refuse nonjudicial punishment and to demand trial by court-martial and (2) the fact that court-martial jurisdiction will be exercised only with respect to the serious offenses of reservists which federal, state or local civilian law enforcement authorities are unwilling or unable to prosecute.

With respect to offenses which cannot be disposed of by administrative or nonjudicial means, every effort should be made to have federal, state or local civilian law enforcement authorities assume jurisdiction when such jurisdiction may be exercised with effect. If a reservist's offense is to be disposed of through the exercise of court-martial jurisdiction (*i.e.*, only serious offenses which cannot be disposed of otherwise), action must be taken with a view towards trial before the termination date of the accused's self-executing AT or ADT orders, and such date must be extended by competent authority, before it has passed, in order to assure UCMJ jurisdiction over any offenses that the reservist may commit after the original termination date.

In an IDT setting, there simply is no UCMJ jurisdiction over Army reservists either for purposes of nonjudicial punishment or for pur-

poses of trial by court-martial. Thus, USAR commanders must exercise a high degree of personal leadership in disposing of disciplinary infractions. While many infractions that are offenses under state law may be referred to civilian law enforcement authorities for prosecution, purely military offenses must be disposed of by administrative means.

Prior to Change 5 (15 May 1980) to AR 135-91, reservists who became unsatisfactory participants due to unexcused absences from IDT could be involuntarily ordered to active duty.<sup>175</sup> This change (effective 1 March 1980) rescinded the provisions authorizing active duty, increased from five to nine the number of unexcused absences from IDT in a 12-month period needed to support a charge of unsatisfactory participation and, in general, requires that reservists charged with unsatisfactory participation be considered for separation under AR 135-178 or transferred directly to the IRR.

The proposal of a similar change in 1975 prompted the then Chief of Army Reserve, MG Henry Mohr, to request TJAG assistance in making nonjudicial punishment under Article 15 available to USAR commanders in the disposition of disciplinary infractions during IDT.<sup>176</sup> In view of the change to AR 135-91 which has come to pass, pressure may again mount to make reservists subject to Article 15 during IDT. Any such change would not come quickly because, as pointed out in the reply to MG Mohr's inquiry:

The only method of accomplishing your desires would be an amendment to Article 15, UCMJ, permitting the imposition of punishment (limited to forfeiture or reductions) on reservists undergoing training during inactive duty training (IDT) but

<sup>175</sup>See note 162 *supra*.

<sup>176</sup>Memorandum from Chief, Army Reserve (DAAR-Per), to TJAG (17 December 1975), Extension of UCMJ Provisions to USAR Members During Periods of Inactive Duty Training (IDT).

<sup>174</sup>*Id.* para. 3-29f.

precluding the right to demand trial by court-martial.<sup>177</sup>

In view of the lack of UCMJ jurisdiction over Army reservists during IDT, USAR commanders are left only with administrative means for disposing of disciplinary infractions which are purely military in nature. Administrative alternatives to UCMJ jurisdiction should, of course, never become a substitute for good leadership; however, if their use becomes necessary, USAR commanders should act promptly and with precision. To avoid the appearance of impotency or indifference, commanders

should periodically conduct classes explaining the types of discharge that may be issued (*i.e.*, honorable, under honorable conditions, under other than honorable conditions), the bases upon which each may be issued and the likely effects of each type of discharge. Although AR 135-178 requires commanders to provide this information to members of their commands and permits the furnishing of a written explanation,<sup>178</sup> an oral presentation by a unit commander in a classroom setting is likely to have a more profound effect upon the impressionable minds of young reservists.

#### Appendix A

AFPR-RC

20 SEP 1975

SUBJECT: Extension of AT/ADT Orders of USAR Personnel Pending Disciplinary Action

Commanders, CONUSA

Commanders, FORSCOM Installations

1. In view of questions which have arisen concerning the authority for amending orders to extend USAR members on active duty pending disciplinary action, the following is furnished for information and guidance.
2. The Judge Advocate General of the Army has held that Article 2, UCMJ, and paragraph 2-4b, AR 635-200, provide authority for extending Reservists on active duty for court-martial purposes. The Commander, US Army Reserve Components Personnel and Administration Center (RCPAC), St. Louis, Missouri has authority to extend orders in the case of individual Reservists. Unit Reservists may be extended by the applicable CONUS Army Commander.
3. It is the policy of this command that, pending disposition of court-martial charges, orders will be amended by the appropriate authority, upon request of the Active Army commander exercising general court-martial jurisdiction over the Reservist, to extend the period of active duty. Pending receipt of amended orders, the GCM commander having geographical area responsibility will cause the Reservist to be attached for the administration of military justice, to an appropriate Active Army unit if such attachment was not clearly or properly reflected in the original AT/ADT orders.
4. This guidance is limited to those cases involving serious offenses during AT or ADT which may not properly be disposed of under Article 15, UCMJ, by reference to appropriate Federal or State authorities, or by administrative action which may be accomplished either prior to or upon return to inactive status.
5. This guidance may be further supplemented by addressees.

FOR THE COMMANDER:

<sup>177</sup> DAJA-CL 1976/1869, para. 3 (24 June 1976).

<sup>178</sup> AR 135-178, para. 1-13 (C3, 15 August 1980).

## Appendix B

ATJA

3 August 1976

SUBJECT: Court-Martial Jurisdiction Over USAR Personnel on Annual Training/Active Duty Training (AT/ADT)

Commanders, TRADOC Installations

1. This letter is issued for information and to provide guidance on procedures to insure continuing jurisdiction over USAR members who, while on annual training or active duty training commit offenses under the Uniform Code of Military Justice.
2. The Judge Advocate General of the Army has advised that Article 2, Uniform Code of Military Justice, and para 2-4b, Army Regulation 635-200, 15 July 1966, provide authority to amend orders to extend the expiration date of self-executing orders for USAR members on AT/ADT pending disciplinary action. In the case of individual Reservists, the Commander, US Army Reserve Component Personnel Administration Center (RCPAC), St. Louis, Mo, has authority to extend such orders. Reservists who are assigned to units may be extended by the appropriate CONUS Army commanders.
3. In order to insure that jurisdiction is preserved over USAR members pending disposition of disciplinary charges, requests for amendment of orders to extend the period of active duty for USAR members will be made by the Active Army commander exercising general court-martial jurisdiction over such Reserve member. Pending promulgation of amended orders, the general court-martial convening authority having geographical area responsibility within TRADOC will cause the Reservist to be attached to the appropriate Active Army unit for the administration of military justice if such attachment was not clearly set forth in the basic active duty orders.
4. This guidance should be reserved to incidents involving serious offenses during AT or ADT which are not properly treated within Article 15, Uniform Code of Military Justice, or by administrative action, or by referral to Federal or State authorities.

FOR THE COMMANDER:

**FROM THE DESK OF THE SERGEANT MAJOR**  
by Sergeant Major John Nolan

1. The year 1980 brought many significant changes and improvements affecting Corps enlisted personnel. I think it is appropriate, as we begin a new year, to review some of the accomplishments and events that occurred during the past year, and to note some activities that are projected for the near future.

A sergeant major and a MILPERCEN Liaison NCO position were established in the Office of The Judge Advocate, HQ, US Army Europe and Seventh Army.

SFC John Meehan replaced MSG Gunther Nothnagel as the OTJAG Liaison to MILPERCEN.

To provide update material and current items of interest to enlisted personnel, this column was established as a monthly feature of *The Army Lawyer*.

The first SQT test was administered to legal clerks in grades E4 through E6. Our personnel did exceptionally well.

Continuing education programs have increased, and are now available for all grades.

Enlisted interests were represented at the annual JAG Conference by chief legal clerks and court reporters from around the world.

Lines of communications have been established among senior NCOs at HQDA, major command, and installation level to improve all senior legal clerk assignment procedures.

Based on comments received from our general officers, as well as my own observations, our legal clerks and court reporters are doing an outstanding job and seem to be getting better. However, we still have a large number of areas where we must show improvement. I will discuss specific problem areas in future articles and in personal contacts.

**2. Assignments.** There continues to be some dissatisfaction with HQDA assignment policies. As we all know, the needs of the Army and the Corps must come first. Although most of our legal clerks and court reporters recognize, understand, and accept this policy, a small number have questions concerning it. SFC Meehan and the assignment team at MILPERCEN are putting forth a concentrated effort to fulfill the needs of the service and yet assign individuals according to their desires, as reflected on their Enlisted Preference Statement (DA Form 2635). Unfortunately, I still hear the complaint that "they should have known" that the preference statement on file was not current due to its age, subsequent reassignment, or personal consideration which may or may not have been "mentioned." It is physically impossible for SFC Meehan or his co-workers to verify by personal contact the accuracy and currency of preference statements of all personnel being considered for each and every assignment. They must assume that the information on file correctly reflects each person's current desires. For the most part, the great majority of our personnel are getting one of their preference statement choices. Although exceptions must often be made to accommodate such matters as compassionate moves, reenlistment, and special requirements, the best way to obtain an as-

signment of choice continues to be by having a *current* preference statement on file at MILPERCEN.

**3. Grade Balance.** Our grade balance is slowly getting better; however, we are still under-strength at the E9 and E5 level and over-strength at the E7 level. We continue to project improvements in our grade balance during the next year.

**4. Uniforms.** The following information was obtained from the Department of the Army Uniform Board and is furnished for your information.

Uniform Item	Wear-Out Date	Issue Date
Starch & Iron Khakis	30 Sep 80	
Tan Wash & Wear, Shade 445	30 Sep 85	
Green Overcoat, Shade 44	30 Sep 85	
Green Sweater, Shade 412	30 Sep 83	
Green Raincoat, Shade 274	30 Sep 85	
Green Windbreaker, Shade 274	30 Sep 83	
Camouflage Fatigues		1 Oct 81 (est)
Wash & Wear Fatigues, Shade 107	30 Sep 85	
Starch & Iron Fatigues	30 Sep 85	
Brown T-Shirt		1 Oct 81 (est)
Camouflage Caps		1 Oct 81 (est)
No-shine Brown Boots		1 Oct 84 (est)

**5. Promotions.** MSG John A. Purnell was promoted to sergeant major on 1 November 1981.

The following legal clerks have been selected for promotion to Sergeant Major:

Name	PSN	DUTY STATION
MSG Walter G. Jester	517	8th Inf Div, Germany
* MSG William G. Crouch	815	Ft. Campbell, KY
* MSG Gunther M. Nothnagel	866	HQ, FORSCOM, Ft. McPherson, GA

\* Indicates selection from Secondary Zone.

**6. Congratulations.** To SFC John D. Utley, who was formally inducted into the USAREUR "Sergeant Morales Club" on 13 November 1980 at Fort Benjamin Harrison, Indiana.

## Professional Responsibility

The Judge Advocate General's Professional Responsibility Advisory Committee recently considered whether a trial counsel had knowingly used false or perjured testimony in prosecuting a case, in violation of Disciplinary Rule 7-102(A)(4) of the American Bar Association's *Code of Professional Responsibility*. This rule states that a lawyer shall not "knowingly use perjured testimony or false evidence."

Defendants A and B were tried separately by general court-martial as accomplices in an affray in which the victim was assaulted and stabbed several times with a knife. The only persons present during the affray were A, B, and the victim.

A, tried first, was charged (Charge I) with assaulting the victim with a means likely to produce grievous bodily harm, a metal mop handle, and (Charge II) as an aider and abettor in the assault upon the victim with intent to murder him by stabbing him with a knife. At the trial of A, the victim testified that A had committed the above offenses. A's testimony concerning the affray differed substantially. The trial counsel argued that A's testimony was "improbable, contradictory and . . . fabricated." A was convicted to lesser included offenses of Charge I and II; assault and battery and assault with a dangerous weapon. A had essentially confessed to the offenses of which he was convicted in a pretrial statement.

The same trial counsel prosecuted B for his part in the affray approximately three days later. In the interim, the trial counsel reassessed his prosecutorial posture. A's conviction of only the lesser included offenses was construed by the trial counsel as an indication that the court believed A and disbelieved the victim. Defense counsel for B had moved to have the victim evaluated by a psychiatrist and declared incompetent, and to have A immunized and available to testify at the trial of B. After the trial of A, the military judge had cautioned the trial counsel against the use of the victim's testimony be-

cause of an apparent concern regarding the victim's ability to be truthful. The trial counsel decided to use only the testimony of A, who had been immunized, and not the testimony of the victim, in the trial of B. All parties to the trial were informed of this decision.

B was convicted of assaulting the victim with the intent to "willfully and wrongfully kill" him. With the exception of the victim's testimony, the trial counsel presented essentially the same evidence as in the trial of A. A's testimony at B's trial was consistent with his testimony at his own trial. The net effect of the government's tactic of calling A, but not the victim, was that the court members never heard testimony to the effect that A was an accomplice to the offense of which B was charged.

The Committee found that there was no professional responsibility violation in this case. There was no way at trial, nor is there any way now, to know which witnesses were telling the truth and which were not. Faced with facts and circumstances which seemed to militate strongly in favor of a change in his theory of the case, the trial counsel did just that. To conclude that A's testimony in this case was known by the prosecutor to be false would be to ignore that all others involved in the trial of B chose A as the most believable (or the least harmful) witness.

One member of the Committee concurred in the principal opinion, but also submitted a separate opinion. This member agreed that no disciplinary action should be taken in this instance. However, the separate opinion emphasized that the outcome in this case should not obscure the fact that trial counsel have an obligation to present all available evidence tending to aid in ascertaining the truth in a case even if the evidence is not consistent with the prosecution theory and is of uncertain credibility. The principal opinion disagreed with this proposition.

## Judiciary Notes

US Army Legal Services Agency

### Digests—Article 69, UCMJ, Applications

In *Otero*, SPCM 1980/4864, the accused was a recruiter assigned to the U.S. Army Recruiting Station in Chicago. He was convicted of committing sodomy with a civilian female, at the recruiting station, at diverse times over a seven month period. The accused contended that the court-martial lacked subject-matter jurisdiction because the offenses did not occur on any military installation, they occurred after duty hours while the accused was in civilian clothing, and they did not involve any other military personnel.

The issue in this case is whether the recruiting station was a military installation. When an offense occurs in a military installation, the

court-martial *ipso facto* has jurisdiction and an analysis of the *Relford v. Commandant*, 401 US 355 (1971), factors to establish service connection is not required. *US v. Rogers*, 7 MJ 274 (CMA 1979); *US v. Rockwell*, 2 MJ 1064 (ACMR 1976), *pet. denied*, 4 MJ 350 (CMA 1978); *US v. Martin*, 3 MJ 744 (NCMR 1977), *affirmed*, 7 MJ 47 (CMA 1979).

The recruiting office was located in a building leased to the General Services Administration. The government, by virtue of its lease, had a proprietary interest in those premises. That is sufficient to make the recruiting station a military installation within the meaning of *Relford v. Commandant*, *supra*. See *US v. Martin*, *supra*. Relief was denied.

## A Matter of Record

Notes from Government Appellate Division, USALSA

### 1. Guilty Plea (Providence)

Just because an accused pleads guilty does not mean a trial counsel can afford to sit back and let the military judge take over. A recent case illustrates the need for careful monitoring of the providence inquiry. Appellant was charged with, and pleaded guilty to, escape from pretrial confinement. He stipulated to the escape from a detention center and described it in detail during the providence inquiry. However, in explaining the elements of the offense to appellant, the military judge consistently utilized the terminology of "breaking arrest." The allegation or error on appeal, which easily could have been avoided, is obvious.

### 2. Review and Action (Disqualification of Convening Authority and SJA)

As in the case of grants of immunity to prosecution witnesses, pretrial agreements with an

accused's co-actors can disqualify convening authorities and SJA's from taking post-trial action in an accused's case. In a recent case, an appellant and a co-actor were charged with the same offenses, but were tried separately. The same officers acted as convening authority and SJA in both cases. In the co-actor's case, there was a negotiated plea which required the co-actor to testify truthfully at appellant's trial. The co-actor subsequently testified against appellant and his testimony played a crucial role in appellant's conviction. According to ACMR, the practical interpretation of the convening authority's agreement with the co-actor was not only that he had a preconceived notion as to what the co-actor would testify, but also that the co-actor's version was true. It was therefore held to be error for the convening authority and his SJA to take any post-trial action in appellant's case "since they could not impartially determine the weight and credibility of testimony addressed at trial."

### 3. Self-incrimination (Confessions)

There are a surprising number of errors alleged on appeal dealing with self-incriminating statements that could be avoided by careful trial preparation. Sometimes witnesses unexpectedly blurt out statements, sometimes statements are not even recognized as admissions, and sometimes statements are simply overlooked because they relate to minor aspects of the trial. An apparent example occurred in a recent case. Appellant was charged with numerous substantial offenses as well as with willful disobedience of an order to get a haircut. There was ample evidence that he was ordered to get the haircut and failed to do so, and thus there was little question that the offense of failure to obey an order was established. Nevertheless, apparently in order to insure proof of the willfulness of appellant's

misconduct, the prosecution introduced evidence that appellant was asked by an NCO, without warnings, why he had not obtained a haircut as ordered. Initially, appellant denied having received the order. Ultimately, he taunted, "Well, you have no witnesses." Both statements were admitted and appellant was convicted. On appeal, CMR set aside the finding on the ground that the unwarned statements were improperly admitted in violation of appellant's Article 31, UCMJ, rights.

Identification of pretrial statements by thorough pretrial preparation is essential. This is even more important now under the new rules of evidence because Mil. R. Evid. 304(d)(1) requires that statements of the accused be disclosed to the defense prior to arraignment. Documenting such disclosures in writing may be a useful way to avoid unnecessary litigation.

### Legal Assistance Items

*Major Joel R. Alvarey, Major Joseph C. Fowler, and Major Walter B. Huffman  
Administrative and Civil Law Division, TJAGSA*

#### Legal Assistance—General

The American Bar Association Standing Committee on Legal Assistance for Military Personnel met at The Naval Amphibious Base, San Diego, California, in early December 1980. The meeting was hosted by the Navy Legal Service Office, San Diego. Committee members and service advisors were joined by numerous Navy and Marine Corps Legal Assistance officers from the area.

Topics discussed at the meeting included: legislative efforts to obtain a statutory basis for legal assistance; expansion to other states of Florida's "Operation Standby", a program where civilian attorneys provide information about local law to legal assistance officers; legal malpractice legislation; and the impact, relevant to lawyer competency, of Section 1 of the January 1980 discussion draft of the proposed Code of Professional Responsibility. Other

topics included: the Committee's efforts to distribute year old Martindale-Hubbell directories to legal assistance offices not having them; updating the contents of the Committee's Model State Seminar for legal assistance officers; the Committee's Legal Assistance Award for outstanding service; and compilation and distribution of a list of publications useful to legal assistance officers. With regard to the latter item, the committee learned that the Air Force has just published a "Legal Assistance Directory" containing phone numbers and addresses of legal assistance offices, but a limited number of copies may be obtained by other legal assistance offices upon request from the Air Force Judge Advocate General School, Leadership and Management Development Center, Maxwell Air Force Base, AL 36112.

Topics suggested by the legal assistance officers for consideration by LAMP include examining state certification requirements for use of

paralegals and studying state requirements on notarizations performed by military officers.

LAMP welcomes suggestions on projects that may benefit legal assistance officers. Such suggestions may be sent to the Legal Assistance Office, ATTN: LTC Pauley, Office of The Judge Advocate General, Department of the Army, Washington, DC 20310.

### Domestic Relations—Separation Agreements

Although the general rule is that alimony agreements are modifiable, in Florida, at least, an express waiver in the separation agreement precludes an ex-spouse from obtaining an increase in alimony. *Muss v. Muss*, 7 Fam. L. Rep. 2061 (Fla. 3d Dist. Ct. App. 1980). The parties entered into a separation agreement and had it incorporated into their final New York divorce decree. In that separation agreement, the parties agreed that neither party could apply to a court for modification of the alimony or support provisions of the agreement. Both parties later moved to Florida where the wife petitioned a Florida court to increase alimony based on the changed circumstances of the parties.

The appellate court looked at both Florida and New York law and determined that the result was the same in both jurisdictions. Modification of an alimony award is expressly permitted by statute based on changed circumstances of the parties, but this statutory right can be waived and was in this case. The court, in dicta, recognized that New York law provided for modification if one party was unable to support himself and was about to become a public charge. That provision, implied the court, might be enough to overcome the waiver if such a condition was shown, but no such showing was made in this case.

**Practice Hint:** Although it may seem desirable to cut off later petitions to modify alimony and support obligations, particularly for the supporting party, the attorney drafting a separation agreement should remember that modification can go both ways. At some later date, either party's circumstances might have

changed sufficiently to support a modification and a "lock-in" may not work to your client's advantage.

### Domestic Relations—Child Support

Although the majority rule is that support orders cannot be modified retroactively, the South Dakota Supreme Court had decided that the power of its courts to modify its orders "from time to time" includes the authority, under proper circumstances, to modify retroactively. *Larsgaard v. Larsgaard*, 7 Fam. L. Rep. 2063 (S.D. 1980).

In this case, the husband had fallen substantially behind in his court ordered support payments, and the wife sued for the arrearages. The trial court found that the husband's income had been drastically reduced because of his deteriorating health and that, under the law of South Dakota, a reduction in both future and past support was appropriate. The South Dakota Supreme Court affirmed the modification. The key issue is the capability of a court to modify its own decrees. According to the South Dakota Supreme Court, its state law is broad enough to permit such retroactive modification by its own courts. The courts of another state, however, could not modify a South Dakota decree retroactively because to do so would violate the full faith and credit clause, *Sistare v. Sistare*, 218 U.S. 1, 54 L. Ed. 905 (1910).

**Practice Hint:** Where you represent a support owing client who has valid grounds to seek modification, your forum will be crucial. You will have to go back to the rendering state for retroactive modification and the states split on whether even they can modify their own support decrees retroactively. Modification of future payments, however, is available generally in both the rendering state and in the state where the supporter now resides.

### New Legislation Louisiana, Visitation/Adoption)

*Louisiana*, in Public Act No. 462, now provides that the consent of a legitimate parent for a child's adoption is not required if the parent

has failed or refused to visit the child for a year. Additionally, Public Act No. 764 defines the offense of criminal neglect of family and authorizes the enforcement against an employer of a child support assignment-of-wages order. Finally, the state has established the standard of "clear and convincing" evidence in termination of parental rights cases.

#### **New Legislation (*Tennessee, Agreements*)**

*Tennessee* now makes antenuptial or prenuptial agreements binding on its courts.

#### **Decedents' Estate and Survivors' Benefits—Survivor Benefits Amendments of 1980—Survivor Benefit Plan**

On 10 October 1980 the President signed into law the Uniformed Services Survivor Benefits Amendments of 1980 (Pub. L. No. 96-402, 94 Stat. 1705). This Act changes and improves the Survivor Benefit Plan (SBP). The changes effect both future retirees and some previous retirees. The major changes made by the Act are:

The dollar-for-dollar Social Security offset against the SBP annuity is now limited to an offset of no more than 40 percent of the annuity. Also, periods of active service of less than 30 continuous days performed after 1 December 1980 will not be counted in computing the offset if the person is entitled to a refund of the Social Security tax paid during such service.

Present and future participants in the SBP will benefit from lower cost charge increases when future increases are made to retired pay. The Act adopts the Civil Service method of cost calculation which results in a much more favorable cost vs. return ratio than that existing under the present plan.

Effective 1 December 1980, SBP annuities (less DIC and Social Security offsets) are pay-

able to the surviving spouse of a member of the Uniformed Services who: (1) Died before 21 September 1972; (2) Was serving on active duty at the time of his/her death and had served on active duty for a period of not less than 20 years; and (3) Was entitled at the time of his/her death to retired pay or was eligible to apply for retired pay. Every effort should be made to provide this information to surviving spouses in your geographic area. Eligibility determinations for surviving spouses of Army personnel may be obtained by writing:

Retired Pay Operations  
US Army Finance & Accounting Center  
Indianapolis, IN 46249

#### **Domestic Relations—Property Division**

The Texas Court of Civil Appeals, 13th District has decided that a military pension earned either before marriage or while a married couple resides in a common law property state is the separate property of the retired service-member, *Cameron v. Cameron*, 6, Fam. L. Rep. 2032 (Tx. Ct. Civ. App. 13th Dist. 1980). Although recognizing that a military pension is an earned property right, subject to division upon dissolution of the marriage, the court held that the inception of title rule determined whether the pension was separate or community property. Although the couple was married during most of the husband's time in service, they only lived in a community property state for three months. The court, therefore, reversed the lower court's award of thirty-five percent of the military pension to the ex-wife.

*Note:* The court apparently did not consider the laws of the states in which the couple resided. If any of those states recognized the pension as divisible property and permitted equitable distribution, then the Texas Court could divide the portion of the pension earned while the couple resided in those states.

#### **Recent Criminal Law Decisions**

1. In *United States v. Middleton*, 10 MJ 123 (CMA 1981), CMA unanimously upheld a unit

health and welfare inspection which included the use of a marijuana detection dog. The court

further held that, where the commander had previously familiarized himself with the dog's capability and reliability, the dog's alert provided probable cause for the commander to authorize a search of a locker which had not been included in the scope of the original inspection. Marijuana discovered therein was held admissible.

Recognizing that inspections have always been a part of military life, the court said, "...during a traditional military inspection, no serviceperson whose area is subject to the inspection may reasonably expect any privacy which will be protected from the inspection." The court also stated, "Accordingly, during a legitimate health and welfare inspection, the area of the inspection becomes 'public' as to the commander, for no privacy from the commander may be expected within the range of the inspection." The court added that the commander (or a member of the commander's inspecting party) may use all of his senses during the inspection, and said, "This rationale extends, as well, to the use of a trained drug detection dog as a means of enhancing his own natural senses." Consequently, the court said, "...the conclusion follows that a drug-detection dog is a proper incident of a legitimate fitness and readiness inspection." The court did not offer an opinion on the correctness of Military Rule of Evidence 313(b), but did say, "However, we do accept its premise that under some circumstances contraband located in the course of a military inspection may be received in evidence. Such evidence is admissible when safeguards are present which assure that the 'inspection' was really intended to determine and assure the readiness of the unit inspected, rather than merely to provide a subterfuge for avoiding limitations that apply to a search and seizure in a criminal investigation."

In this case the inspection did not include physical intrusion of locked lockers. However, the detection dog's alert on the locked locker of the accused, repeated in the presence of the commander, sufficed to establish probable cause, given the commander's previous obser-

vation of the dog and receipt of information establishing the dog's reliability. The commander's activities in this case did not disqualify him from authorizing the search under *United States v. Ezell*, 6 MJ 307 (CMA 1979). See *United States v. Rivera*, 10 MJ 55 (CMA 1980).

The court in *Middleton* favorably quoted the ACMR opinion in *United States v. Hay*, 3 MJ 654, 655-56 (ACMR 1977) which defined military inspections.

2. In *United States v. Lloyd*, 10 MJ 172 (CMA 1981), CMA ruled, in an opinion by Chief Judge Everett, that Article 31(b) warnings are not required before requesting a suspect to give a handwriting sample. Noting federal cases holding that blood specimens, handwriting and voice exemplars are not protected by the privilege against self-incrimination, the court's ruling was based upon the rationale of its decision in *United States v. Armstrong*, 9 MJ 374 (CMA 1980), that the substantive protections of Article 31 were not intended to differ from the protections of the Fifth Amendment. Judge Fletcher concurred in the opinion without comment. Judge Cook concurred in the result, but did not believe the facts of the case required reexamination of Article 31 application to handwriting samples.

3. In *United States v. Dawson*, 10 MJ 142 (CMA 1981), CMA held a typical "post-trial misconduct" prohibition in a pretrial agreement, violation of which allowed a convening authority to depart from the sentence limitation contained in the agreement and approve the more severe sentence adjudged at trial, was unenforceable. In separate opinions, Judge Fletcher and Chief Judge Everett held the provision to be void due to insufficient clarity as to the procedure contemplated for resolving alleged violation of the condition. The sentence in excess of the limitation in the agreement was set aside. Chief Judge Everett suggested that a well-drafted provision, with procedural safeguards including hearing on the alleged misconduct, might be enforceable. The requirements announced in the decision substantially reduce the utility of the "post-trial misconduct" provision.

## Reserve Affairs Items

*Reserve Affairs Department, TJAGSA*

### 1. Reserve ID Cards

The Judge Advocate General's School does not issue Reserve Component ID cards. A reserve officer who needs an ID card should follow the procedure outlined below:

1. Fill out DA Form 428 and forward it to the Commander, U.S. Army Reserve Components Personnel and Administration Center, ATTN: AGUZ-PSE-VC, 9700 Page Boulevard, St. Louis, Missouri 63132. Include a copy of recent AT orders or other documentation indicating that applicant is an actively participating Reservists.

2. RCPAC will verify the information and the individual's entitlement, prepare an ID card, and send it back to the Reservist.

3. The Reservist must sign it, affix fingerprints, attach an appropriate photograph, and return the materials to RCPAC.

4. RCPAC will affix the authorizing signature and laminate the card, and will send the finished card to the applicant. Also inclosed will be a form receipt for the ID card.

5. Applicant must execute the receipt form and send it to RCPAC.

### 2. JAGSO Legal Service Teams & Military Law Centers

Officers in JAGSO Legal Service Teams and Military Law Centers will attend Annual Training at The Judge Advocate General's School from 15-26 June 1981. The 1155th USAR School from Edison, New Jersey, will be hosting the training. Enlisted personnel who are not attorneys will *not* attend AT at TJAGSA. Courses have not been scheduled at Fort Benjamin Harrison for this summer. Request for orders should specify only the personnel indicated above. Orders should reflect assignment to the 1155th USAR School with duty station at TJAGSA for pay purposes.

### 3. JABOAC & JARCGSC Resident Phases

The Judge Advocate Branch Officer Advanced Course (Phase IV) and the Judge Advocate Reserve Components General Staff Course (Resident Phase) will be held at The Judge Advocate General's School from 6-17 July 1981. The 3285th USAR School from Charlotte, North Carolina, will be hosting the courses. Requests for orders should reflect assignment to the 3285th USAR School with duty station at TJAGSA for pay purposes. This is the *last* resident phase of the JARCGSC to be offered at TJAGSA!

## New JAGC Brigadier General Selected

Colonel Ronald M. Holdaway has been selected for promotion to the grade of brigadier general. Colonel Holdaway currently serves as Executive, Office of The Judge Advocate General. During twenty-one years of active service with the Corps, Colonel Holdaway's assignments have included Staff Judge Advocate, VII Corps, United States Army Europe; Chief, Personnel, Plans and Training Office, OTJAG; Chief, Government Appellate Division, United

States Army Legal Services Agency; and Staff Judge Advocate, First Cavalry Division, Vietnam. Colonel Holdaway's military education includes completion of the Basic Officer's Infantry Course, Judge Advocate Officer Basic and Advanced Courses, United States Army Command and General Staff College, and the Industrial College of the Armed Forces. A Wyoming native, he received his bachelor's and law degrees from the University of Wyoming.

**JAGC Personnel Section***PP&TO, OTJAG***1. Reassignments**

	<i>FROM</i>	<i>TO</i>
<b>LIEUTENANT COLONEL</b>		
COLE, Raymond	Korea	USALSA w/ duty sta Ft. Leavenworth, KS
O'BRIEN, Maurice	AFSC	OTJAG
SANDELL, Lawrence	USALSA, WASH DC	Ft. Sam Houston, TX
 <b>MAJOR</b>		
KESLER, Dickson	Ft Monroe, VA	S&F, TJAGSA w/ duty sta Ft Harrison, IN
 <b>CAPTAIN</b>		
ARENSBERG, Cornelius	Korea	Europe
BOWEN, Pat	Canal Zone	Dugway PG, UT
CREA, Dominick	Canal Zone	Presido, CA
FEGLEY, Gilpin	USAREUR	S&F West Point, NY
GRENDALL, Timothy	Ft Hood, TX	S&F, TJAGSA
HARTNETT, Daniel	USALSA, Europe	USALSA, WASH DC
HIGGINS, Adele	Ft Ord, CA	Ft Campbell, KY
SMITH, Montgomery	USAREUR	Ft Sill, OK
SILVA, Theodore	Korea	Ft Lewis, WA
UNDERHILL, James	Korea	USALSA, WASH DC
VANDERBOOM, Kathleen	Korea	USAREUR
WHITE, Rozann	MTMC, WASH DC	USAREUR
WOODRUFF, William	Ft Gordon, GA	OTJAG

**2. School Attendees**

The following individuals have been selected to attend the schools as indicated for the Academic Year 1981-1982:

*Industrial College of the Armed Forces*

Lieutenant Colonel Ronald P. Cundick

*Army War College*

Lieutenant Colonel (P) Thomas R. Cuthbert  
Lieutenant Colonel (P) William G. Eckhardt

*Command and General Staff College*

Major William A. Aileo  
Major Charles A. Bonney  
Major Theodore B. Borek

Major John C. Cruden  
Major Donald A. Deline  
Major Richard J. Mackey  
Major John W. Richardson  
Major Robert P. Williams, Jr.  
Major Gregory O. Varo

*Armed Forces Staff College*

Major David Zucker (Aug 81—Jan 82)  
Lieutenant Colonel Herbert J. Green (Feb 82—Jun 82)  
Major John K. Wallace (Feb 82—Jun 82)

**3. Promotion**

CW3  
MALONEY, Frank E.

**4. Retired**

**MAJOR**  
**ROBERTS, Eldon D.**

**CW4**  
**KNIGHT, Lawrence G.**

## **Computerized Legal Research FLITE**

Approximately 60 per cent of the decisions of the Comptroller General are never published, but these unpublished decisions have the same force and effect as those which are published. There is no index to the unpublished decisions and, in fact, very few people have access to the decisions themselves.

Federal Legal Information Through Electronics (FLIGHT) has two research aids, one which makes these decisions available and another which makes them searchable. First, all of the unpublished decisions available to FLITE have been placed on microfiche and can be obtained from FLITE for \$10 per set. This set contains an index in "B" number sequence for ease in locating the correct decision. Second, these same decisions are all stored in FLITE's computer memory bank and are available for searching simply by contacting FLITE's service center. Call FLITE and you will be referred to an attorney who will discuss your research question with you. Once the attorney has a complete understanding of your question, he or she will do the computer search and review the printed results. Normally the results are mailed, but if you need the results quickly, a telephone response can be given. Many of our clients routinely initiate a FLITE search as soon as they have an idea of potential issues. When issues change or become further defined,

FLITE's easy access allows follow-up with additional research requests.

Your requests will be handled with absolute confidentiality. Conflict of interest considerations preclude the use of the same FLITE attorney for adverse parties. If your adversary also uses us, a different attorney will perform the research.

A complete list of the legal materials available for researching can be obtained by calling FLITE, but a few of the files of particular interest are Military Justice Reporter, Federal Supplement, Federal Reporter (1st and 2d Series), Supreme Court Reporter, and United States Code.

FLITE is free to all DOD activities and military components. There are no purchase orders or red tape involved.

Simply call:

Autovon	926-7531
FTS	326-7531
Commercial	(303) 370-7531

Or Mail:

FLITE  
 Denver CO 80279

MSG:

FLITE Lowry AFB CO

## **CLE News**

### **1. Resident Course Quotas**

Attendance at resident CLE courses conducted at The Judge Advocate General's School is restricted to those who have been allocated quotas. Quota allocations are obtained from lo-

cal training offices which receive them from the MACOM's. Reservists obtain quotas through their unit or RCPAC if they are non-unit reservists. Army National Guard personnel request quotas through their units. The Judge

Advocate General's School deals directly with MACOM and other major agency training offices. Specific questions as to the operation of the quota system may be addressed to Mrs. Kathryn R. Head, Nonresident Instruction Branch, The Judge Advocate General's School, Army, Charlottesville, Virginia 22901 (Telephone: AUTOVON 274-7110, extension 293-6286; commercial phone: (804) 293-6286; FTS: 938-1304).

## 2. TJAGSA CLE Courses

March 2-6: 20th Federal Labor Relations (5F-F22).

March 9-20: 87th Contract Attorneys (5F-F10).

April 6-10: 59th Senior Officer Legal Orientation (5F-F1).

April 13-14: 3d U.S. Magistrate Workshop (5F-F53).

April 27-May 1: 11th Staff Judge Advocate Orientation (5F-F52).

May 4-8: 60th Senior Officer Legal Orientation (Army War College) (5F-F1).

May 4-8: 3d Military Lawyer's Assistant (512-71D20).

May 11-15: 1st Administrative Law for Military Installations (TBD).

May 18-June 5: 22nd Military Judge (5F-F33).

June 1-12: 88th Contract Attorneys (5F-F10).

June 8-12: 61st Senior Officer Legal Orientation (5F-F1).

June 15-26: JAGSO Reserve Training.

July 6-17: JAGC RC CGSC

July 6-17: JAGC BOAC (Phase IV).

July 20-31: 89th Contract Attorneys (5F-F10).

July 20-August 7: 23d Military Judge Course (5F-F33).

August 3-October 2: 96th Basic Course (5-27-C20).

August 10-14: 62nd Senior Officer Legal Orientation (5F-F1).

August 17-May 22, 1982: 30th Graduate Course (5-27-C22).

August 24-26: 5th Criminal Law New Developments (5F-F35).

September 8-11: 13th Fiscal Law (5F-F12).

September 21-25: 17th Law of War Workshop (5F-F42).

September 28-October 2: 63d Senior Officer Legal Orientation (5F-F1).

## 3. Civilian Sponsored CLE Courses

### May

2: CCEB, Employment Discrimination Actions, San Francisco, CA.

2: CCEB, Medical Proof/Personal Injury Litigation, Fresno/Riverside, CA.

2: CCEB, Punitive Damages, Sacramento/Westwood, CA.

3-8: NJC, Civil Litigation—Graduate, Reno, NV.

6-8: SLF, Federal Income Taxation, Dallas, TX.

6-8: PLI, Fundamental Estate Planning, San Francisco, CA.

7-9: ALIABA, Estate Planning, Baltimore, MD.

8: NYSBA, Federal Court Practice, New York City, NY.

8: GICLE, Small Estate Planning, Atlanta, GA.

8-9: AICLE, Tax Seminar, Point Clear, AL.

9: CCEB, Medical Proof/Personal Injury Litigation, Tahoe/Westwood, CA.

10-15: NCDA, Prosecutor's Office, Houston, TX.

10-15: NJC, Criminal Evidence—Graduate, Reno, NV.

13: MCLNEL, Anatomy of a Criminal Trial, Northhampton, MA.

14-15: SLF, Antitrust Law, Dallas, TX.

15: GICLE, Small Estate Planning, Savannah, GA.

15-16: AICLE, Gulf Shores Seminar, Sandestin, FL.

16: CCEB, Employment Discrimination Actions, Los Angeles, CA.

20: MCLNEL, Anatomy of a Criminal Trial, Cambridge/Springfield, MA.

22: GICLE, Residential/Small Business Real Estate, Albany, GA.

24-31: NWU, Trial Advocacy, Chicago, IL.

27: MCLNEL, Anatomy of a Criminal Trial, Plymouth/Worcester, MA.

28-29: ABA, Real Estate Financing, San Francisco, CA.

28-29: ABA, Truth in Lending, San Francisco, CA.

29: MCLNEL, Bank Law Update, Boston, MA.

29: GICLE, Residential/Small Business Real Estate, Atlanta, GA.

30: MCLNEL, Massachusetts Tort Law, Harwich, MA.

For further information on civilian courses, please contact the institution offering the course, as listed below:

AAA: American Arbitration Association, 140 West 51st Street, New York, NY 10020.

AAJE: American Academy of Judicial Education, Suite 437, Woodward Building, 1426 H Street NW, Washington, DC 20005. Phone: (202) 783-5151.

ABA: American Bar Association, 1155 E. 60th Street, Chicago, IL 60637.

AICLE: Alabama Institute for Continuing Legal Education, Box CL, University, AL 36486.

ALIABA: American Law Institute-American Bar Association Committee on Continuing Professional Education, 4025 Chestnut Street, Philadelphia, PA 19104.

ARKCLE: Arkansas Institute for Continuing Legal Education, 400 West Markham, Little Rock, AR 72201.

ATLA: The Association of Trial Lawyers of America, 20 Garden Street, Cambridge, MA 02138.

BCGI: Brandon Consulting Group, Inc., 1775 Broadway, New York, NY 10019.

BNA: The Bureau of National Affairs Inc., 1231 25th Street, N.W., Washington, DC 20037.

CALM: Center for Advanced Legal Management, 1767 Morris Avenue, Union, NJ 07083.

CCEB: Continuing Education of the Bar, University of California Extension, 2150 Shattuck Avenue, Berkeley, CA 94704.

CCH: Commerce Clearing House, Inc., 4025 W. Peterson Avenue, Chicago, IL 60646.

CCLE: Continuing Legal Education in Colorado, Inc., University of Denver Law Center, 200 W. 14th Avenue, Denver, CO 80204.

CLEW: Continuing Legal Education for Wisconsin, 905 University Avenue, Suite 309, Madison, WI 53706.

DLS: Delaware Law School, Widener College, P.O. Box 7474, Concord Pike, Wilmington, DE 19803.

FBA: Federal Bar Association, 1815 H Street, N.W., Washington, DC 20006. Phone: (202) 638-0252.

FJC: The Federal Judicial Center, Dolly Madison House, 1520 H Street, N.W., Washington, DC 20003.

FLB: The Florida Bar, Tallahassee, FL 32304.

- FPI:** Federal Publications, Inc., Seminar Division Office, Suite 500, 1725 K Street NW, Washington, DC 20006. Phone: (202) 337-7000.
- GCP:** Government Contracts Program, George Washington University Law Center, Washington, DC.
- GICLE:** The Institute of Continuing Legal Education in Georgia, University of Georgia School of Law, Athens, GA 30602.
- ICLEF:** Indiana Continuing Legal Education Forum, Suite 202, 230 East Ohio Street, Indianapolis, IN 46204.
- ICM:** Institute for Court Management, Suite 210, 1624 Market St., Denver, CO 80202. Phone: (303) 543-3063.
- IPT:** Institute for Paralegal Training, 235 South 17th Street, Philadelphia, PA 19103.
- KCLE:** University of Kentucky, College of Law, Office of Continuing Legal Education, Lexington, KY 40506.
- LSBA:** Louisiana State Bar Association, 225 Baronne Street, Suite 210, New Orleans, LA 70112.
- MCLNEL:** Massachusetts Continuing Legal Education—New England Law Institute, Inc., 133 Federal Street, Boston, MA 02108, and 1387 Main Street, Springfield, MA 01103.
- MOB:** The Missouri Bar Center, 326 Monroe, P.O. Box 119, Jefferson City, MO 65101.
- NCAJ:** National Center for Administration of Justice, Consortium of Universities of the Washington Metropolitan Area, 1776 Massachusetts Ave., NW, Washington, DC 20036. Phone: (202) 466-3920.
- NCATL:** North Carolina Academy of Trial Lawyers, Education Foundation Inc., P.O. Box 767, Raleigh, NC. 27602.
- NCCDL:** National College of Criminal Defense Lawyers and Public Defenders, Bates College of Law, University of Houston, Houston, TX 77004.
- NCDA:** National College of District Attorneys, College of Law, University of Houston, Houston, TX 77004. Phone: (713) 749-1571.
- NCJFCJ:** National Council of Juvenile and Family Court Judges, University of Nevada, P.O. Box 8978, Reno, NV 89507.
- NCLE:** Nebraska Continuing Legal Education, Inc., 1019 Sharpe Building, Lincoln, NB 68508.
- NDAA:** National District Attorneys Association, 666 North Lake Shore Drive, Suite 1432, Chicago, IL 60611.
- NITA:** National Institute for Trial Advocacy, University of Minnesota Law School, Minneapolis, MN 55455.
- NJC:** National Judicial College, Judicial College Building, University of Nevada, Reno, NV 89507.
- NPI:** National Practice Institute Continuing Legal Education, 861 West Butler Square, 100 North 6th Street, Minneapolis, MN 55403. Phone: 1-800-328-4444 (In MN call (612) 338-1977).
- NWU:** Northwestern University School of Law, 357 East Chicago Avenue, Chicago, IL 60611.
- NYSBA:** New York State Bar Association, One Elk Street, Albany, NY 12207.
- NYSTLA:** New York State Trial Lawyers Association, Inc., 132 Nassau Street, New York, NY 12207.
- NYULT:** New York University, School of Continuing Education, Continuing Education in Law and Taxation, 11 West 42nd Street, New York, NY 10036.
- OLCI:** Ohio Legal Center Institute, 33 West 11th Avenue, Columbus, OH 43201.
- PATLA:** Pennsylvania Trial Lawyers Association, 1405 Locust Street, Philadelphia, PA 19102.
- PBI:** Pennsylvania Bar Institute, P.O. Box 1027, 104 South Street, Harrisburg, PA

PLI: Practising Law Institute, 810 Seventh Avenue, New York, NY 10019. Phone: (212) 765-5700.

SBM: State Bar of Montana, 2030 Eleventh Avenue, P.O. Box 4669, Helena, MT 59601.

SBT: State Bar of Texas, Professional Development Program, P.O. Box 12487, Austin, TX 78711.

SCB: South Carolina Bar, Continuing Legal Education, P.O. Box 11039, Columbia, SC 29211.

SLF: The Southwestern Legal Foundation, P.O. Box 707, Richardson, TX 75080.

SNFRAN: University of San Francisco, School of Law, Fulton at Parker Avenues, San Francisco, CA 94117.

TBI: The Bankruptcy Institute, P.O. Box 1601, Grand Central Station, New York, NY 10017.

UDCL: University of Denver College of Law, 200 West 14th Avenue, Denver, CO 80204.

UHCL: University of Houston, College of Law, Central Campus, Houston, TX 77004.

UMLC: University of Miami Law Center, P.O. Box 248087, Coral Gables, FL 33124.

UTCLE: Utah State Bar, Continuing Legal Education, 425 East First South, Salt Lake City, UT 84111.

VACLE: Joint Committee of Continuing Legal Education of the Virginia State Bar and The Virginia Bar Association, School of Law, University of Virginia, Charlottesville, VA 22901.

VUSL: Villanova University, School of Law, Villanova, PA 19085.

## Current Materials of Interest

### Regulations

<i>Number</i>	<i>Title</i>	<i>Change</i>	<i>Date</i>
AR 135-91	Service Obligations, Methods of Fulfillment, Participation Requirements and Enforcement Procedures	903	29 Dec 80
AR 135-100	Appointment of Commissioned and Warrant Officers	901	9 Jan 81
AR 135-175	Separation of Officers	901	26 Nov 80
AR 135-178	Separation of Enlisted Personnel	902	27 Nov 80
AR 135-200	Active Duty for Training and Annual Training of Individual Members	6	1 Dec 80
AR 140-1	Mission, Organization & Training	901	12 Dec 80
AR 140-10	Assignment, Attachments, Details and Transfers	4	1 Nov 80
AR 200-1	Environmental Protection and Enhancement	901	23 Dec 80
AR 340-18-1	Army Functional File System: General Provisions	902	8 Dec 80
AR 360-61	Community Relations	901	21 Nov 80
AR 600-20	Army Command Policy and Procedures	901	29 Dec 80
AR 600-200	Enlisted Personnel Management System	901	1 Jan 81
AR 601-50	Appointment of Temporary Officers in the Army of the US Upon Mobilization	901	12 Dec 80
AR 601-280	Army Reenlistment Program	4	1 Jan 81
DA Pam 190-52	Personnel Security Precautions Against Acts of Terrorism	1	1 Dec 80

By Order of the Secretary of the Army:

**E. C. MEYER**  
*General, United States Army*  
*Chief of Staff*

Official:

**J. C. PENNINGTON**  
*Major General, United States Army*  
*The Adjutant General*

★ U.S. GOVERNMENT PRINTING OFFICE: 1981 341-809/6

C

C

C

